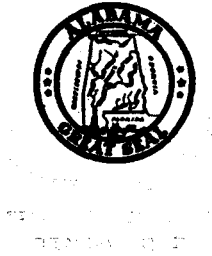


Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For the Period
From October 1, 1964
Through December 31, 1964

VOLUME 117

RICHMOND M. FLOWERS, Attorney General



T. O. "TILLIE" WALKER
E D WALKER

QUARTERLY REPORT
of the
ATTORNEY GENERAL
of
ALABAMA

For the Period
From October 1, 1964
Through December 31, 1964

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1964 through December 31, 1964, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

RICHMOND M. FLOWERS
Attorney General

RICHMOND M. FLOWERS
Attorney General

HARVEY ELROD
Deputy Attorney General

Dennis M. Lasseter
Executive Assistant

Randolph G. Lurie
Chief Assistant Attorney General

Assistant Attorneys General

W. Mark Anderson, III
Robert P. Bradley
Owen Bridges
David W. Clark
Joe Breck Gantt
Paul T. Gish, Jr.

Leslie Hall
Gordon Madison
William N. McQueen
James L. Screws
Bernard F. Sykes
John C. Tyson, III

Legal Research Aide
Roy E. Hicks

Assistant Attorneys General Assigned to other Departments

Agriculture and Industries:

George O. Miller

Conservation:

William G. O'Rear
John D. Bonham
David Ellwanger

Examiners of Accounts:

James W. Webb

Finance:

James T. Hardin

Health:

Robert F. Miller

Highway:

Charles G. Reynolds
John G. Bookout
Mrs. Julia H. Griswold
Winston Huddleston
George D. Mentz
James R. Solomon, Jr.

Pensions and Security:

Mrs. Mary Lee Stapp
Mrs. Carol F. Miller

Revenue:

Willard W. Livingston
Herbert Burson
William H. Burton, Jr.
B. Frank Loeb
James R. Payne
William C. Younger

OPINIONS

October 5, 1964

Hon. Robert L. Donan
Clerk

Montgomery County Court
County Court House
Montgomery, Alabama 36104

Fines — Costs & Fees — Definitions — Criminal Law
— Courts — Dept. of Public Safety.

1. The "additional penalty" provided for in Act No. 244, General Acts of Alabama 1964, p. 335 is akin to a "fine" and the collection thereof is enforced in the same manner.

2. The judge imposing the penalty should make a finding that the violation occurred while the vehicle was in motion.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of September 14, 1964, is as follows:

"As Clerk of the Montgomery County Court, Montgomery, Alabama, I am in need of guidance in the form of an official opinion from your office concerning recently enacted legislation (House Bill No. 84) entitled: 'Relating to Public Safety; prescribing additional penalties for certain traffic offenses and appropriating the proceeds thereof.'

"The guidance required concerns two matters, they are:

"1. Should the 'additional penalty of \$1.00' be construed as an item of court costs or as an additional fine? (This is of great importance in the event there is non-payment and the fine and/or costs must be paid by days in confinement).

"2. What specifically is a 'moving traffic violation?' Would it include the following?

- a. Drivers license violations.
- b. Vehicle license Violations.
- c. Equipment violations.
- d. Load restriction violations.

"In reference to the second matter above, I would suggest, if feasi-

ble, an enumeration of the violations included."

Act No. 244, General Acts of Alabama 1964, Special Session, (H. 84), p. 335, provides, in pertinent part, as follows:

"Sec. 1. **In addition to all other fines, fees, costs, and punishments** now prescribed by law there shall be **imposed or assessed an additional penalty** of one dollar (\$1.00) upon the driver of any motor vehicle upon his conviction by any judge in any court * * * of any offense involving a moving traffic violation; * * *." (Emphasis supplied).

The above statute imposes on each driver convicted of a moving traffic violation a **penalty** of \$1.00 **in addition to all other fines, fees, costs, and punishments** heretofore prescribed for offenses against the traffic laws.

It appears to require the judge convicting a person of a moving traffic violation to collect an additional one dollar; but it does not provide that the one dollar is a part of the costs or a part of the fine. The only clue the statute gives us is the wording: "an additional **penalty** of one dollar."

In Volume 36A, Sec. 1 Fines, C.J.S. p. 433, the following is found:

"While a fine is always a penalty, a penalty is not always a fine. The main distinction between the terms, as used in the restricted sense, seems to be based on the fact that a penalty may be incurred by reason of acts or omissions that involve no idea of criminality. Ordinarily a penalty is a sum certain which goes to the statutory beneficiary, while a fine is discretionary within the limits prescribed and is paid to the State.

"The terms 'fine' and 'penalty,' however, are often used as synonymous; * * *. The true signification of these terms, when used in a statute or constitution, must be ascertained according to the ordinary methods of interpretation."

A careful reading of the Act gives one the impression that the Legislature intended to place upon a delinquent driver an additional punishment by way of this one dollar penalty; therefore, it is my opinion that the one dollar additional penalty imposed by the Legislature is in the nature of a fine.

It should be collected in addition to the fine heretofore authorized, and for non-payment thereof, is to be collected in the manner provided for the non-payment of fines. See Title 15, Sec. 341, Code of Alabama 1940, as Recompiled 1958.

Your second question requests me to define and list the "moving traffic violations" for which a person could be convicted.

Act No. 244, supra, defines a "moving traffic violation" as follows:

"* * * any offense which can occur only if the motor vehicle is in motion."

It is my opinion that the one dollar penalty should be imposed whenever a person is convicted of a "moving traffic violation." In order to be guilty of a "moving traffic violation," as defined by Act No. 244, supra, a person must have committed a traffic offense, the essential ingredient of which was the motion of the vehicle. In other words, a person must be guilty of a traffic offense which charged him with **driving** or **operating** a motor vehicle contrary to the particular statute involved.

Hence, it is my further opinion that the judge trying a person for a traffic violation must determine separately that the original offense charged could have occurred only while the vehicle was in **motion** before he imposes or assesses the one dollar **penalty** authorized by Act. No. 244, supra.

For this reason I do not feel that I could adequately define all of the offenses that would come within the purview of Act. No. 244, supra.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General ,

October 5, 1964

Honorable M. G. Hale
Judge of Probate
Colbert County
Tuscumbia, Alabama

Elections — Poll Tax and Poll List — Voters.

1. Newly registered voters who were liable for the payment of poll tax on October 1 of a given year and did not pay such poll tax on or before February 1 of the succeeding year are not eligible to vote in any state or local election during that succeeding year.

2. Newly registered voters who were not liable for the payment of poll tax on October 1 of a given year but who become liable for such poll tax on October 1 of the succeeding year are eligible to vote in state and local elections held after October 1 of that year provided they are otherwise qualified.

Opinion by Assistant Attorney General Hall.

Dear Judge Hale:

I have your letter of September 25, 1964, which is as follows:

"The City of Tusculumbia, Alabama, has called a special election on a 5 mill district school tax increase, the same to be held on October 20, 1964.

"The question is whether or not newly registered voters, within the poll tax age, will be qualified to vote in this election if they pay their poll tax between October 1 and election day?"

- Section 178 of the Alabama Constitution of 1901 as amended by Amendment CCVII (207), November 11, 1962, now reads as follows:

"To entitle a person to vote at any election by the people, he shall have resided in the state at least one year, in the county six months, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the two calendar years next preceding. Provided, that any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal."

You will note that this section provides that to entitle a person to vote at **any** election by the people he shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote all poll taxes **due from him** for the two calendar years next preceding.

In an opinion dated October 16, 1963, addressed to Honorable George T. Culp, Tax Collector, reported in Vol. 113, Quarterly Reports of Attorney General at page 39, it was held that the liability for the payment of poll taxes does not depend on the length of a person's residence in this state but on his status as of October 1 of any given year, subject to two years maximum amount of tax.

In an opinion dated October 20, 1960, addressed to Honorable Estes R. Flynt, Judge of Probate of Lauderdale County, reported in Vol. 101, Quarterly Reports of Attorney General, page 21, it was held that any person, whether formally registered or not, **who was liable for poll tax on October 1 of a given year**, and did not pay such tax on or before

February 1 of the succeeding year but does pay such tax on or after October 1 of that succeeding year is not qualified to vote in the general election to be held in November of that succeeding year.

In an opinion dated December 28, 1953, addressed to Honorable Gordon Persons, Governor of Alabama, reported in Vol. 73, Quarterly Report of the Attorney General, page 81, it was held that if on October 1 of any year a person is over the age of 21 years and under the age of 45 years and not exempt, he owes the poll tax for that year; that he owes it on that October 1; and that unless he pays it on or before the succeeding February 1 he is not qualified to vote at elections held during the period February 2 and February 1 (inclusive) following (see page 84). You will note that that opinion pointed out that a person reaches or becomes a designated age on the day preceding the anniversary of his birth (see page 87).

In this connection I would like to call your attention to **In re Opinion of the Justices**, 257 Ala. 712, 60 So. 2d 686, in which it was held that any person who was liable for poll tax on any given October 1 and did not pay the same by the succeeding February 1 could not become eligible to vote by paying such poll tax on or after the October 1 following the preceding February. In other words, the effect of this decision is that if a person is liable for poll tax and does not pay such poll tax by February 1 of any year, he could not vote in any election held during that year.

Therefore, answering your specific question, if a person was over the age of 21 years and under the age of 45 years and not exempt on **October 1, 1963**, and did not pay the poll tax for which he was liable on or before February 1, 1964, he would not be eligible to vote in the special election to be held in the City of Tuscombua on October 20, 1964, regardless of whether he was a newly registered voter or not.

On the other hand, if a person became 21 years of age after October 1, 1963, he would not be liable for the poll tax due on October 1, 1963, and payable on or before February 1, 1964. If he becomes a newly registered voter prior to the municipal election to be held on October 20, 1964, although he is liable for the payment of the poll tax due October 1, 1964, he has until February 1 1965 to pay such tax. Therefore, since he would not be delinquent on October 20, 1964, he may vote in this municipal election if otherwise qualified even though his poll tax is not paid at that time.

This office has ruled that the prohibition, now appearing as Title 17, Sec. 27(2), Code of Alabama 1940 (Recompiled 1958), against registration of persons as qualified electors within 10 days prior to "any primary, special or general election" does not apply to municipal elections. See Vol. 74, Quarterly Report of Attorney General, page 38.

It should be understood that this opinion does not apply to eligibility to vote in national elections since payment of poll taxes is no longer a prerequisite to voting therein.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 6, 1964

Honorable Charles H. Younger
City Attorney
City of Huntsville
Huntsville, Alabama

Municipalities — Officers and Offices.

The Council of the City of Huntsville may by ordinance designate the officers and department heads of the City and provide that their appointments be made by the Council.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion under date of September 10, 1964, is as follows:

"The City of Huntsville, Alabama is governed by a Mayor Council form of government. The powers of the Mayor of the City of Huntsville, Alabama are enumerated in Title 37, Section 441, Code of Alabama, 1940. The powers of the City Council are of course those specified in Title 37, Section 429, Code of Alabama 1940.

"Pursuant to those powers enumerated therein, the City Council of the City of Huntsville, Alabama has adopted ordinances providing for the appointment of officers and department heads and, in addition, specifies their term of office. The said ordinances are codified as part of the Code of Ordinances of the City of Huntsville, Alabama. All of said ordinances provide that the appointments of officers and department heads are to be made by the Council.

"In 1963 the Legislature of the State of Alabama passed House Bill 788 as introduced by Representatives Baker, Reynolds and Pennington. The Act, by its terms in Section 7 thereof specifically repeals that part of Title 37, Sections 404, 440, and 441 as amended and Act No. 663, Senate Bill 132, Regular Session, 1961, (Acts 1961, Page 827) in so far as the same are in conflict.

"House Bill 788 by its terms and specified in Section 9 thereof is to become effective October 1, 1964. The newly elected Mayor and Council for the City of Huntsville, Alabama will take office October 5, 1964.

"Section 3 of House Bill 788 contains the following language ' . . . He shall have the power to appoint all officers and department heads whose appointment is not otherwise provided for by law, but such appointments to be effective shall be approved by a majority affirmative vote of the Council.'

"You will note that the language in House Bill 788 is almost identical to that of Title 37, Section 441. The similarity of the language creates considerable question as to whether or not House Bill 788 actually changed the provisions of Section 441 so far as making of appointments is concerned.

"For my guidance in properly advising the Mayor and City Council of the City of Huntsville, Alabama, I respectfully request your opinion as to the effect of House Bill 788, more particularly, I would like your opinion on the following questions:

"1. Does House Bill 788 give the Mayor authority to initially appoint all officers and department heads of the City of Huntsville, Alabama, other than the office of City Clerk-Treasurer, whose appointment is provided for by State law?

"2. If the answer to question No. 1 is no, does the Council still have the power under Title 37, Section 429 to designate by ordinance the officers and department heads of the City and provide for the appointments to be made by the Council?"

The statute enacted by the Legislature in 1963, to which your request refers, is cited as Act No. 371, Acts of Alabama 1963, page 870.

Section 3 of Act No. 371, *supra*, reads in part as follows:

"The mayor shall be the chief executive officer, and shall have general supervision and control of all other offices and the affairs of the city except as herein otherwise provided; he shall have the power to appoint all officers and department heads whose appointment is not otherwise provided for by law, but such appointments to be effective shall be approved by a majority affirmative vote of the council. . . ."

Title 37, Section 441, Code of Alabama 1940, as Recompiled 1958, reads in part as follows:

"The mayor shall be the chief executive officer, and shall have general supervision and control of all other officers and the affairs of

the city or town, except as herein otherwise provided; he shall have the power to appoint all officers, whose appointment is not otherwise provided for by law. . . ."

You will note that under both Section 3 of Act No. 371, *supra*, and Title 37, Section 441, *supra*, the mayor may appoint only those municipal officers whose appointment is not otherwise provided for by law. Section 3 of Act No. 371, *supra*, requires that appointments made by the mayor must be approved by a majority vote of the council. Title 37, Section 441, *supra*, does not require council approval of such appointments.

In the case of **Beasley v. McCorkle**, 237 Ala. 4, 184 So. 904, the Supreme Court of Alabama held that a municipal council may by ordinance create the office of chief of police and provide that said office be filled by appointment made by the council. In its opinion rendered in this case the Court construed the statutes now codified as Title 37, Sections 34, 407 and 429, Code of Alabama 1940, as Recompiled 1958.

Title 37, Section 34, *supra*, reads as follows:

"§ 34. ELECTION OF MUNICIPAL OFFICERS SPECIALLY PROVIDED FOR. — Cities and towns may, except as otherwise provided by law, by ordinance provide for the election at any regular municipal election, or for the appointment of such officers as are deemed needful or proper for the good government of the city or town, and the due exercise of its corporate powers, fix their terms of office, fix their compensation, and prescribe the duties of such officers, their liabilities and powers, and require them to give bond in such sum and to be conditioned and approved as the council may prescribe."

Title 37, Section 407, *supra*, authorizes a municipal council to provide for a tax assessor, tax collector, chief of police and chief of the fire department.

Title 37, Section 429, *supra*, enumerates the general powers of a municipal council.

Although the Court, in its opinion in **Beasley v. McCorkle**, *supra*, did not discuss the statute now codified as Title 37, Section 441, *supra*, the report of said case found in 237 Ala. 4, shows that said statute was brought to the attention of the Court in the brief filed by the attorney for the appellant.

Following **Beasley v. McCorkle**, *supra*, I am of the opinion that the provisions of both Title 37, Section 441, *supra*, and Section 3 of Act No. 371, *supra*, limit the power of the mayor to appoint municipal officers to such officers whose appointment is not otherwise provided for by

statute or by ordinance enacted under the authority of a statute.

Title 37, Section 405, Code of Alabama 1940, Recompiled 1958, which is applicable to the City of Huntsville, requires the City Council to appoint certain municipal officers, authorizes said Council in its discretion to appoint certain other officers and further provides that said Council may elect "... any officers whose election is required by ordinance. ..."

Therefore, you are advised that those ordinances of the City of Huntsville to which the second paragraph of your request refers are valid.

For the above reasons your first question is answered in the negative and your second question is answered in the affirmative.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 14, 1964

Honorable Phillip J. Hamm
Commissioner of Revenue
State of Alabama
Montgomery, Alabama

Taxation — Exemptions — Ad Valorem Taxes.

The phrase "capital stock" as used in Title 51, Section 6, as amended, Code of Alabama 1940, Recompiled 1958, means "shares of stock."

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion bearing date of September 30, 1964, is as follows:

"Title 51, Section 6, Code of Alabama 1940, as amended, Recompiled 1958, authorizes the Department of Revenue, among other things, to exempt from all ad valorem taxes for state purposes 'all of the capital stock' of certain new industries locating in the State of Alabama. There is no ad valorem tax levied by any statute of this state directly on capital stock as such.

"Your opinion is requested as to what interpretation should be given to the meaning of 'capital stock' as used in Section 6, supra."

While "capital stock" and "shares of stock" are different things and form different subjects of taxation (6 Words and Phrases, pp. 118-122), it is also true that the words "capital," "capital stock," "shares of capital stock" and "stock" may be used as synonyms, or with different meanings, dependent upon the context in which they occur and the subject matter to which they are applied. (6 Words and Phrases, pp. 117-118). In the case of **Liberty Paper Board, Inc. v. United States**, 37 F. Supp. 751, it is stated:

"The term 'capital stock' has no fixed significance in tax statutes. It must be construed in a particular statute by reference to the context, the nature and purpose of the statute, and other rules of construction. *Ray Consol. Copper Co. v. United States*, supra, 268 U. S. at page 376, 45 S. Ct. 526, 69 L. Ed. 1003. In the present case, Congress allowed the taxpayer to declare the value of its capital stock which value would be thereafter conclusive on both the taxpayer and the government. A reasonable declared value was assured by the imposition of an excess profits tax on all taxable net income in excess of 12½ per centum of the declared value. It cannot be said that the profits of a corporation do not bear a reasonable relationship to the value of its capital stock."

It is my opinion that the phrase "capital stock" as used in Section 6, supra, means "shares of stock" and that the Department of Revenue has the authority to exempt from all ad valorem tax for state purposes all of the shares of stock of a domestic corporation qualified for the exemption as authorized in Section 6, supra.

In arriving at the above conclusion, I feel that it is very significant to point out that there is no statute in the Code of Alabama which levies an ad valorem tax on "capital stock." Title 51, Section 25, Code of Alabama 1940 levies an ad valorem tax on the shares of stock of a domestic corporation. Unless the term as used in section 6, supra, does mean "shares of stock," then the Legislature authorized an exemption of property from a non-existent tax in which case the exemption would be meaningless. The Legislature will not be presumed to have used language in a statute without any meaning or application or to have done a vain and useless thing. **McDonald v. State**, 32 Ala. App. 606, 28 So. 2d 805; **Haralson v. State ex rel. King**, 260 Ala. 473, 71 So. 2d 79; **In re Opinion of the Justices**, 267 Ala. 114, 100 So. 2d 681.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 20, 1964

Honorable Phillip J. Hamm
Commissioner of Revenue
Department of Revenue
Administrative Building
Montgomery, Alabama

Licenses — Taxation — Taxes — Alabama Alcoholic
Beverage Control Board.

Act No. 589, Acts of Alabama 1963, page 1285, which levies a privilege tax or license on every manufacturer, distiller, producer, or distributor selling alcoholic liquors to the State Alcoholic Beverage Control Board, discussed generally.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated October 13, 1964, is as follows:

"Act No. 589, Acts of Alabama 1963, page 1285, levies a license tax on every manufacturer, distiller, producer, or distributor of alcoholic liquors in an amount equal to 3% of its total gross sales of alcoholic liquors to the State of Alabama Alcoholic Beverage Control Board during the preceding calendar year, plus a filing fee of \$250.00.

"If a manufacturer, distiller, producer, or distributor of alcoholic liquors who applies for a license has made no sales to the State ABC Board during the preceding year, he pays the filing fee of \$250.00 and 'by March 1 of the succeeding year, remit with the statement to the commissioner of revenue as required by this section, the amount of taxes due on the basis of sales made during the remainder of the calendar year in which he first applied for a license; provided, the commissioner of revenue shall require the applicant to file with his original application a bond in the penal sum of not less than \$1,000 nor more than \$10,000 conditioned upon the payment of the license taxes to become due by the applicant.' This law became effective January 1, 1964.

"Since January 1, 1964, there have been several manufacturers, distillers, producers, or distributors who have applied for the license and filed the required bond but who were not due to pay the 3% license tax at the time the application for the license was filed since they had made no sales to the State ABC Board during the preceding year 1963.

"Assuming that these manufacturers, distillers, producers, or distributors referred to in the preceding paragraph apply for a license after January 1, 1965 to continue making sales to the State ABC Board during the year 1965, there appears to be no question that they will owe a license tax for the calendar year 1965 in an amount equal to 3% of their total gross sales to the ABC Board during the preceding calendar year 1964.

"Your official opinion is requested in answer to the following questions:

"1. Will they also owe a license tax under Act No. 589, supra, for the privilege of having engaged in business during 1964?

"2. If so, what will be the basis for computing the 3% license tax?"

While your request relates to the license, if any, for the year 1964 due by the manufacturers or distributors referred to, the conclusion reached in this opinion will apply to manufacturers or distributors under similar circumstances for subsequent years.

Act No. 589, supra, amended Act No. 298, General Acts 1947, page 149, by rewriting the entire Act.

Section 1 of Act No. 298, supra, as amended by Act No. 589, supra, provides as follows:

"Section 1. No manufacturer, distiller, producer, or distributor of alcoholic liquors shall be admitted or authorized to do business in or with this state without a license issued in accordance with this Act."

Section 3 of Act No. 298, supra, as amended by Act No. 589, supra, provides, in part, as follows:

"Section 3. A license issued under this Act shall expire on December 31 of the year in which it is issued and may be renewed annually . . ."

Since the effective date of Act No. 589, supra, was January 1, 1964, it is obvious that the first license year to which said Act applied was the calendar year 1964 and the first license was for the privilege of doing business with the State ABC Board during the calendar year 1964.

From the facts stated in your request, the only manufacturers, distillers, producers, or distributors with which you are concerned are those who applied for and obtained the license required by Act No. 298,

supra, as amended by Act No. 589, supra, on or since January 1, 1964, and who made no sales of alcoholic liquors to the State ABC Board during the calendar year 1963. Consequently, under the provisions of Section 2 of Act No. 298, supra, as amended by Act No. 589, supra, the pertinent part of which is quoted in the second paragraph of your request, the 3% privilege tax was not due at the time the application for the license was filed. All that was required of such manufacturers or distributors at that time to obtain a license for the remainder of the calendar year 1964, was the payment of the \$250.00 filing fee and the filing of the required bond "conditioned upon the payment of the license taxes to become due by the applicant." Section 2, supra, also gives such manufacturers or distributors until "March 1 of the succeeding year," which in this case would be March 1, 1965, to pay "the amount of taxes due on the basis of sales made during the remainder of the calendar year in which he first applied for a license."

It is my judgment that the above provisions of Act No. 298, supra, as amended by Act No. 589, supra, clearly indicate that the license tax is due by the manufacturers or distributors under consideration for the privilege of making sales of alcoholic liquors to the ABC Board during the remainder of the calendar year 1964, the year in which they first applied for a license. In effect, the Act authorizes a license to be issued on the condition, secured by a bond, that the tax to become due by such manufacturers or distributors will be paid by March 1, 1965, the year succeeding the year in which the application for the license was first filed. Surely, the Legislature did not intend to levy the license tax for the year 1964 on manufacturers or distributors who had made sales to the ABC Board during the calendar year 1963, but, on the other hand, allow the manufacturers or distributors under consideration to make sales to the ABC Board during the remainder of the calendar year 1964 without paying the tax for the same privilege. They have exercised that privilege during 1964 for which the payment of the tax is required the same as those who sold to the ABC Board during 1963. With respect to such manufacturers or distributors, the bond that they filed in 1964 could not be to guarantee payment of the tax due on or before March 1, 1965 in order to secure the license for the calendar year 1965. The license for 1965 cannot be issued until the tax based on the sales made during 1964 is paid and the ABC Board is by Section 6 of Act No. 298, supra, as amended by Act No. 589, supra, prohibited from buying alcoholic liquors from any manufacturer or distributor who is not licensed as provided in the Act. If they do not apply for a license for 1965, there will, of course, be no license issued and no license tax will be due for the license year 1965. Therefore, there can be only one purpose for the bond requirement and that is to guarantee the payment of the tax due for the license for the year 1964. A bond is not required for manufacturers or distributors who make sales to the ABC Board during the year preceding the year in which they apply for a license. Incidentally, the maximum bond is far from adequate in the case of some manufacturers or distributors.

It is my opinion that by the provisions of Section 2, quoted in your request, the Legislature merely delayed the payment of the tax by such manufacturers or distributors for the year 1964 until on or before March 1, 1965, and that the tax would be based on the amount of sales made to the ABC Board during the remainder of the calendar year 1964, the year in which they first applied for the license. The Legislature used gross sales during the first year of business as the basis of the first year's license tax for such manufacturers or distributors since they would have no sales for the preceding year on which to base the tax as would manufacturers or distributors who made sales during 1963 and who continued to make sales to the ABC Board after January 1, 1964, the effective date of Act No. 589, supra.

In view of the above, my answers to your specific questions are as follows:

1. Yes.
2. The basis for computing the 3% license tax will be the total gross sales of alcoholic liquors made to the State ABC Board during the calendar year 1964.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 23, 1964

Honorable William C. McCain
Senator
Tuscaloosa County
705 First National Building
Tuscaloosa, Alabama

Voters — Residence — Military Personnel Students.

Title 17, Section 17, Code of Alabama 1940, is not a prohibition against a student or a member of the Armed Forces establishing a residence in the State of Alabama.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of October 14, 1964, is as follows:

"I would appreciate an opinion from your office concerning the proper interpretation by Voter Registration Boards of the above statute in regard to a student of an institution of learning or the husband or wife of a student when the said student does not pay out of State tuition fees and states to the Board that he does not have a permanent residence in any other County of Alabama but that he is a resident of Tuscaloosa County, Alabama, maintains a domicile in this county not connected with housing furnished by the institute of learning and intends that this county be his county of residence.

In reply to your request, you are advised that a student or the husband or wife of a student or persons in the Armed Forces of the United States may establish a residence in the State of Alabama, Title 17, Section 17, Code of Alabama 1940, notwithstanding. This section reads as follows:

"§17. Residence not acquired or lost by temporary absence. — No person shall lose or acquire a residence either by temporary absence from his or her place of residence without the intention of remaining, or by being a student of an institution of learning, or by navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful residence, or by being absent from his or her place of residence in the civil or military service of the state, or the United States; neither shall any soldier, sailor or marine, in the military or naval service of the United States, acquire a residence by being stationed in this state."

In my opinion, the above-quoted Code section is not a prohibition against a student or the husband or wife of a student of an institution of learning in this State or a member of the Armed Forces of the United States stationed in Alabama acquiring a residence within the State. This section merely provides that the mere fact, and the fact alone, of a person being a student of an institution of higher learning or a person being stationed in the State of Alabama as a member of the Armed Forces, will not establish residence in the State. A person's residence is a mixed question of law and fact, dependent upon the intention and acts of the individual. **Pope v. Howle**, 227 Ala. 154, 149 So. 222. It, therefore, follows that if a student or the wife of a student or a member of the Armed Forces of the United States intends to make Alabama his or her residence and intends to remain in this State after he finishes school or after his discharge from the Armed Services of the United States, he may by his actions and intentions establish a residence in the State of Alabama, Section 17, *supra*, to the contrary notwithstanding.

You are, therefore, advised that if the persons here considered have resided in the State of Alabama the sufficient length of time required

by the Constitution and intend to become permanent residents of the State of Alabama, they may register and vote in this State.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

October 26, 1964

Honorable Sam Drinkard
Tax Assessor
Marengo County Court House
Linden, Alabama

Tax Assessors — Commissions — Assessments.

1. Under Title 51, Section 30, Code of Alabama 1940, Re-compiled 1958, the tax assessor earns his commissions as to state and county ad valorem taxes, with the exception of certain specified special school taxes, when he makes his assessments.
2. Under Title 51, Section 37, Code of Alabama 1940, Re-compiled 1958, the tax assessor makes his assessment when he returns, fixes the value and lists the property on the tax rolls.
3. It is not necessary for the tax assessor under Title 51, Section 30, supra, to perform any of the additional duties required of him under Section 57 of Title 51, supra, or elsewhere in Title 51, supra, and to do anything other than to make his assessments under Section 37, supra, in order to earn his commissions under Section 30, supra, except as to the additional duties required under Section 30, as to certain specified special school taxes.
4. Opinion of this office to Honorable Sam Drinkard, Tax Assessor, Marengo County, dated September 9, 1964, extended accordingly.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing the date of October 19, 1964, is as follows:

"In your official opinion to me dated September 9, 1964, you stated that the tax assessor could validly assign his commissions, as between himself and assignee, at any time after he had earned his commissions during the tax year.

"In view of the fact that there now appears to be considerable concern as to what might happen under such assignment if the tax assessor dies or for some other reason could not serve as such for the entire tax year, or particularly where he serves only for a short time during the year, I would like to have your official opinion as to when during the tax year does the tax assessor earn his commissions under Title 51, Section 30, Code of Alabama 1940, Recompiled 1958."

In my opinion the tax assessor earns his commission under Title 51, Section 30, Code of Alabama 1940, Recompiled 1958, except for certain specified special taxes, when he makes the assessments. **Stewart v. Sample**, 168 Ala. 270, 53 So. 182; **Crow v. Board of School Commissioners**, 228 Ala. 107, 152 So. 26; Quarterly Report of the Attorney General, Volume 97, page 8, and Biennial Report of the Attorney General 1934-1936, page 721.

Under Section 37 of Title 51, Code of Alabama 1940, Recompiled 1958, the return, the fixing of the value and the listing of the property by the tax assessor, constitutes the making of the assessment by him. **Perry County v. Selma, etc., R. Co.**, 58 Ala. 546, 559, and **Beltona Coal, etc., Company v. Hawkins**, 210 Ala. 359, 98 So. 26. The assessment procedure must be commenced by the tax assessor on the first day of October and finished by him on the first day of January following. The tax assessor, however, may be allowed through the third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, and such supplemental return must be entered as any other return and shall be embraced in the abstract made for the Department of Finance, the tax collector, and Department of Revenue. It is possible, and I understand that it is often the case for a tax assessor to make most of his assessments, other than those relating to the property of public utilities, prior to January 1, of the tax year involved. Thus, he earns his commissions as he makes the assessments. **Stewart v. Sample**, 168 Ala. 270, 53 So. 182, and Quarterly Report of the Attorney General, Volume 97, page 8.

There are other duties, in addition to the actual making of the assessments, which are also required to be performed by the tax assessor under Title 51, Chapter 7, Code of Alabama 1940, Recompiled 1958, i.e., to certify the correctness of the returns, notify the Department of Revenue, and deliver the returns to the Board of Equalization not later than the second Monday in March, as is required under Section 57 of Title 51, among other requirements under Chapter 7 of Title 51, *supra*. These,

however, are said to be additional duties which play no actual part in his making the assessments. The commissions are said to be earned when the assessments are made, without regard to the tax assessor performing the additional ministerial or clerical duties. **Stewart v. Sample**, supra, 53 So. at pages 185 and 186; Quarterly Reports of the Attorney General, Volume 97, page 8, Volume 4, page 14 and Volume 1, page 154.

Of course, the tax assessor does not earn his commissions as to any public utility property until such time as he has completed such assessments based on the valuations certified to him by the State Department of Revenue under the provisions of Title 51, Section 175, Code of Alabama 1940, Recompiled 1958. Under Section 175 the valuations as to public utility property are not required to be certified to the tax assessor by the Department of Revenue until on or before July 1, or as soon thereafter as is practicable. The assessments as to the property of public utilities then are made on a different basis than that prescribed generally for other property under Title 51, Chapter 7, supra.

The basis for my statement in my opinion to you of September 9, 1964, that the tax assessor can validly assign his commissions, as between himself and an assignee, after he has earned his commissions for the tax year involved, is in line with the holding of our Supreme Court in the case of **Schloss v. Hewlett**, 81 Ala. 266. The Court in that case held that as a matter of public policy the salaries or fees of public officials cannot be validly assigned until such salaries or fees have been earned by such officials.

In the case of **Stewart v. Sample**, supra, the Court agreed with the principle of the **Schloss** case, but also held that in the case of state ad valorem taxes the commissions are earned by the tax assessor when he makes the assessments, without any regard to what other duties the tax assessor is called upon to perform, e.g., the delivery of the returns and assessments to the Board of Equalization, etc., as is provided for in Section 57 of Title 51, supra. In the **Sample** case, however, the Court held that the commissions as to county taxes, as distinguished from state taxes, were not earned until the assessments were by the tax assessor carried up and extended on the assessment book.

Under Title 51, Section 30, supra, the requirements are not the same, for in the **Sample** case the Court was construing Section 2097 of the Code of Alabama 1907. Section 2097, supra, expressly required in the case of county taxes, and in order for the tax assessor to earn his commission, that they be "... regularly assessed, carried up or extended on the assessment book, ..." This required the tax assessor to do something more than assess county taxes before earning his commissions thereto, and the Court so held. In the case of State taxes, Section 2097 read exactly as Section 30, Title 51, supra, does at the present time, that "The tax assessor shall be entitled to receive from the tax collector, out of the first monies collected from the state ... the following commissions on the State taxes: ...," but not as to county taxes.

As Section 2097 was rewritten and was incorporated in the 1940 Alabama Code as Section 30 of Title 51, said quoted provision relating to the commissions as to county taxes was entirely deleted. No distinction is made in Section 30 between state and county taxes insofar as the requirements for the payment of the commissions to the tax assessor are concerned. Section 30, *supra*, now reads in applicable part, as follows:

“The tax assessor shall be entitled to receive from the tax collector, out of the first money collected by him . . . the following commissions: . . .”

This applies to the commissions for the assessment of county as well as State ad valorem taxes, without any distinction being made. Moreover, no requirement is now made under Section 30, *supra*, that the tax assessor do anything more than make the assessments as to both for the tax assessor to earn his commissions.

The foregoing being considered, the principle that under the wording of the statute and in the case of state taxes, the tax assessor earns his commissions at the time he makes the assessments, as was pronounced by the Court in *Stewart v. Sample*, *supra*, now seems equally as applicable under the provisions of Section 30, *supra*, to the assessments by the tax assessor of county taxes. The only exception to this is that Section 30 does require the tax assessor, in the case of special county or district taxes for school purposes, in addition to making the assessments, to properly apportion these special taxes before he earns his commissions.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 9, 1964

Honorable Louise S. Champion
Tax Assessor
Montgomery County
Montgomery, Alabama

Taxation — Ad Valorem Taxes — Tax Sales — Tax Assessors

1. A purchaser from the state of land previously purchased by the state at a delinquent tax sale is not entitled to a refund of the purchase money under the provisions of Title 51 § 297, Code of Alabama 1940, as amended, on the basis that no taxes were due when the state owned a right-of-way

over the entire parcel of land for the complete period of delinquent taxes for which the land was sold.

2. Tax sale of land for delinquent taxes over which the state owned a right-of-way for the entire period of said delinquent taxes, otherwise valid, is not void on the ground that no tax was due.

3. The owner of the fee simple title should assess and pay ad valorem taxes on land over which the state has a road right-of-way.

Opinion by Assistant Attorney General Younger.

Dear Mrs. Champion:

Your request for an official opinion bearing date of September 24, 1964 is as follows:

"Attached is a copy of a letter received from the Examiners of Public Accounts, which gives all information on a complicated situation.

"Condemnation Proceedings were filed on this property, January 11, 1960.

"Will you kindly give me an opinion as to whether Mr. David Russell can receive a refund for the amount of tax paid to the State of Alabama for the property, namely:

"LOT 1 BLOCK 13 LAKEVIEW, NO. 6"

The pertinent parts of the letter from the office of the Examiners of Public Accounts to you as Tax Assessor of Montgomery County, Alabama, which you enclosed for the purpose of setting out the problem, is as follows:

"On your last visit to this office you requested that I review and advise you as to the proceedings involved in the condemnation and subsequent tax sale of Lot 1, Lakeview Subdivision No. 6, formerly owned by one Carl Guye. As I understand the situation from the Department of Revenue and the State Highway Department, the state condemned a right-of-way across the property in May 1960. The Tax Assessor, not being notified, carried the assessment forward on the books on October 1, 1960 and, after October 1, 1961, the taxes not having been paid, a tax sale was conducted and the property was bought by the State of Alabama. It was subsequently sold to one David Russell.

"I have checked with the State Highway Department and have been informed that the condemnation proceeding was for a right-of-way

only and that fee simple title was not condemned. I further understand from the Highway Department that the condemnation proceedings were handled by the firm of Azar, Campbell & Azar of this city.

"I am inclined to believe that, in view of the small likelihood of reversion ever obtaining to the holder of the fee simple title, Mr. Russell might now obtain refund under the provisions of Section 297, Title 51, Code of Alabama Recompiled 1958. However, in view of the circumstances, I believe that the best procedure would be to seek an opinion of the Attorney General on this situation."

Additional information obtained from the decree of condemnation in the instant case indicates that the state condemned and acquired only an easement or right-of-way and that the owner retained the fee simple title.

Your question, briefly stated, is whether a person, who purchased land from the state which the state had acquired at a tax sale, is entitled to his money back under the provisions of Title 51, Section 297, Code of Alabama 1940, as amended, when the purchaser finds out that the piece of land had been previously condemned by the state for a road right-of-way, that said piece of land is now under an interstate highway, and that the state had owned the right-of-way for the entire period covered by delinquent taxes upon which the tax sale was based, on the grounds that no taxes were due for said period, making the tax sale void.

Title 51, Section 297, Code of Alabama 1940, as amended, provides for a refund of the purchase money to a purchaser who has purchased a piece of property from the state which the state had purchased previously at a tax sale when no taxes were due.

The controlling question in the instant case then is whether the taxes were due. It is my opinion that the taxes were due for the period even though the State of Alabama owned a right-of-way over the entire tract of land for the complete period of the delinquent taxes. My opinion is based upon the fact that the original owner against whom the taxes were assessed retained title in fee with right to make uses of the property which do not interfere with the easement when the right-of-way was condemned by the state. **Alabama Power Co. v. Berry**, 222 Ala. 20, 130 So. 541; Quarterly Report of Attorney General, Volume 22, page 92; Quarterly Report of Attorney General, Volume 69, page 9; and he owned such fee in the land on the law day the taxes became due and at the time of the tax sale.

As a practical matter the owner of the fee in most instances does not continue to assess the land when the State had condemned the entire tract for a road right-of-way but he should do so if he desires to

retain his title in fee to the land. I find no provision in the law that would relieve an owner in these circumstances from assessing his land for taxes and the law is clear that land should be assessed for ad valorem taxes by the owner of the fee. **Ken Realty Company v. State**, 247 Ala. 610, 25 So. 2d 675; Title 51, Section 21, Code of Alabama 1940, as amended.

In the instant case the Tax Assessor carried forward the previous year's assessment which is the correct procedure in Montgomery County, and it was not necessary for the owner of the fee to assess the property for the assessment to be valid. Title 51, Section 80, Code of Alabama 1940, as amended.

Assuming that the tax sale of the land in the instant case for the non-payment of delinquent taxes was otherwise in order, such sale was not void on the ground that no taxes were due, because, as indicated above, said taxes were due; although the assessment may have been too high because of the existence of the state's right-of-way.

At the time the state purchased the land at the tax sale it already owned the right-of-way. The interest acquired at such tax sale was all of the interest of the one in whose name the property was assessed. **Downing v. City of Russellville**, 241 Ala. 494, 3 So. 2d 34; **Gunter v. Townsend**, 202 Ala. 160, 79 So. 644. That interest in this case was the title in fee burdened by the state's right-of-way. After the state purchased the land at the tax sale it owned both the fee and the right-of-way and the two interests merged. If the title in fee to dominant and servient estates is vested in one owner all rights are merged into one title. **Stanley v. Barclay**, 253 Ala. 650, 46 So. 2d 210. Based upon information furnished me by the State Department of Revenue, by the express terms of the deed in the instant case from the State of Alabama to the purchaser, the state conveyed only the interest of the owner in fee that it had acquired at the tax sale. Therefore, the state retained and still owns the right-of-way.

Considering the above, it is my opinion that your question should be answered in the negative. The purchaser from the state is not entitled to a refund of the purchase money under the provisions of Title 51, Section 297, Code of Alabama 1940, as amended.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 9, 1964

Dr. Ira L. Myers
State Health Officer
Department of Health
Montgomery, Alabama

State Board of Health — Hospitals — Words and Phrases.

1. The State Board of Health is the sole and official agency of the State to receive and administer any and all funds for the purpose of constructing, equipping, maintaining, and operating community mental health centers.

2. The phrase "public health hospitals, health centers, and related facilities" includes mental health centers.

Opinion by Assistant Attorney General Miller.

Dear Sir:

Your request for an official opinion dated October 27, 1964, is as follows:

"Under authority of Public Law 88-164, Title II, the Secretary of the Department of Health, Education, and Welfare has allocated \$778,622 to Alabama to be used during fiscal year 1965 for the "construction of public and other nonprofit community mental health centers." In order to take advantage of this money, it is necessary that the State submit a plan to carry out the purpose of the law. The plan must, among other things, 'designate a single State agency as the sole agency for the administration of the plan or designate such agency as the sole agency for supervising the administration of the plan.' Public Law 88-164, § 204(a)(1).

"Another requirement of the Act is that 'satisfactory evidence' be submitted with the plan indicating that the agency designated is, in fact, the single and sole agency that has the power, right, and legal authority to act in such matters. We have been assured by the Assistant Surgeon General of the Public Health Service that 'satisfactory evidence' would consist of an official opinion of the Attorney General stating that the State Board of Health has been so designated by the Legislature, together with copies of the parts of the constitution and statutes on which the opinion is based.

"It is, therefore, requested that you render an official opinion as to whether the State Board of Health is the single and sole agency of the State of Alabama which has authority to supervise the administration of a State plan for the construction, operation, and administration of community mental health centers."

This question of whether the State Board of Health is the single State agency appointed by the State of Alabama to exercise authority in health matters is a reoccurring one and has been answered in the affirmative on previous occasions. See Quarterly Reports of Attorney General, Volume 47, page 21, and Volume 78, page 31. In my opinion, the answer is still in the affirmative.

It has generally been assumed that Alabama built its legal framework to participate in funds available from the Federal Government for hospital construction after Congress acted to make the funds available. The reverse is true. Alabama's Legislature acted in 1945; the Hospital Survey and Construction Act, popularly called the Hill-Burton Act, Public Law 79-725, was not effective until August 13, 1946. In order for Alabama to take advantage of the impending Federal program it was necessary that the Constitution be amended, because the Constitution of Alabama 1901, Section 93, forbade the State to engage in works of internal improvement or to lend its money or credit in aid of such. Furthermore, since it was uncertain that the Legislature would meet in 1946, it was necessary that the amendment be prepared now (in 1945) to be ready for the election in November of 1946. Also, since the Hill-Burton Act had not yet been passed by Congress and, if our Legislature was to act now (in 1945), it was necessary that it anticipate. Thus Alabama's Legislature enacted very broad and comprehensive legislation to provide the legal framework for receiving any funds from any source at any future time. Two acts passed that year are pertinent to our present consideration.

The first of these, Act No. 210, General Acts of 1945, page 328, became Amendment 53 on November 14, 1946 (Proclamation Record, Volume G, page 125). It established in the Legislature power to designate or create an agency to accept and administer funds donated by the United States Government upon terms and conditions as may be imposed.

Constitution of Alabama 1901, Amendment LIII, reads as follows:

"The state, notwithstanding section 93 of the Constitution as amended and section 94 of the Constitution, may acquire, build, establish, own, operate and maintain hospitals, health centers, sanatoria and other health facilities. The **legislature** for such purposes may appropriate public funds and may authorize counties, municipalities and other political subdivisions to appropriate their funds, and **may designate or create an agency or agencies to accept and administer funds** appropriated or donated for such purposes by the United States government to the state upon such terms as may be imposed by the United States government." (Emphasis added.)

Then, acting on faith that Act. No. 210 would be adopted by the electorate, the Legislature passed a companion bill, Act No. 211, General Acts 1945, page 332, approved July 7, 1945, designating the State Board

of Health as the sole administrator. The Attorney General construed it as being constitutional, even though passed prior to the adoption of Amendment 53. Quarterly Report of Attorney General, Volume 42, page 47.

As to whether the State Board of Health was the single and sole administrator it was said:

"This Act, in unambiguous language, names the State Board of Health as the State's sole administrator thereof. Section 5 expressly designates the State Board of Health 'as the sole and official agency of the State.'" Quarterly Report of Attorney General, Volume 47, page 24.

The text of Section 5, referred to in the last sentence, is as follows:

"The state board of health is (a) hereby designated as the sole and official agency of the state of Alabama to receive and administer any and all funds for the purpose of constructing, equipping, maintaining, and operating public health hospitals, health centers, and related facilities appropriated by the United States government or the state of Alabama, and it may receive and administer any and all gifts or donations in general from any individual or agency for the purpose of constructing, equipping, maintaining, and operating such facilities; (b) hereby authorized to enter into contracts with any agency for the purpose of carrying the above into effect." Title 22, § 204(7), Code of Alabama 1940.

Your question was again answered in the affirmative when it came up after the 83rd Congress enacted Public Law 83-482, which broadened the field for which Hill-Burton funds were available to include three new categories: i.e., nursing homes, diagnostic and treatment centers, and rehabilitation centers. The Attorney General stated:

"Section 5 of Act No. 211, *supra*, clearly and unequivocally designates the State Board of Health as the sole and official agency to receive and administer funds from appropriations by the United States Government for the purposes of constructing, equipping, maintaining, and operating public hospitals, health centers and related facilities. It is prospective as well as retrospective in its operation . . ." (Quarterly Report of Attorney General, Volume 78, page 31, page 33).

Relying on the definition of "hospital" as adopted by the Supreme Court of Alabama in **Noble v. First National Bank**, 241 Ala. 85, 1 So. 2d 289, as "an institution for the reception, care and medical treatment of the sick and wounded," the Attorney General said that it could not be argued reasonably that nursing homes, diagnostic and treatment centers and rehabilitation centers are not included within the purview of Section 5 of Act No. 211, *supra*.

"If said classifications are not in truth hospitals, then at least they are related facilities. (Ibid. page 35)

Now, because Congress has again broadened the scope of hospital facilities for which Federal money is available (Public Law 88-164) to include community mental health centers, the question again arises as to whether the State Board of Health is the sole agency which has authority to administer the program in Alabama.

It is my opinion that the language of Act No. 211 is so general that it not only applies to Public Laws 79-725 and 83-482, but also to Public Law 88-164. There is nothing in its language to indicate that it was enacted just to take advantage of Hill-Burton funds. The State Legislature, in its wisdom, acted to give the State Board of Health very broad and sweeping powers to receive and administer funds that might become available in the future. It was explicitly concerned with "any and all funds" and "any and all gifts or donations" "from any individual or agency." (Title 22, § 204(7), *supra*). The funds provided by Public Law 88-164 are comprehended within this expansive language.

Should it be doubted that a community mental health center is included in the term, "public health hospitals, health centers, and related facilities," one need only compare the definition of "Community Mental Health Center" as adopted by Public Law 88-164 and the definition of "hospital" promulgated by Act No. 211, General Acts 1945, page 330.

Public Law 88-164, § 401(c), reads as follows:

"(c) The term 'community mental health center' means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients or rehabilitation of such persons which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated."

Section 1 of Act No. 211 defines a "mental hospital" as a "hospital." (Title 22, Section 204(3), Code of Alabama 1940). Section 2 of the Act gave the State Board of Health authority over hospital and health activities of an unlimited scope by the use of the word "any." Section 2 is as follows:

"The state board of health is hereby authorized and empowered to acquire, construct, equip, maintain, and operate public hospitals, health centers, and related facilities for the treatment of any type of disease. The state board of health is authorized and empowered to cooperate and to make contracts with the United States government, any local political subdivision or their agencies, any non-profit association or public improvement society in the acquisition

building, equipping, maintaining, and operation of any public hospitals, health centers, and related facilities for the treatment of any type of disease." Title 22, § 204(4), Code of Alabama 1940.

I find it impossible to doubt that a community mental health center is included in the term "**any** public hospitals, health centers, and related facilities for the treatment of **any type of disease.**"

It is, therefore, concluded that the State Board of Health is the sole and official agency of the State to receive and administer any and all funds for the purpose of constructing, equipping, maintaining, and operating community mental health centers.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 16, 1964

Honorable John R. Phillips
Attorney, Civil Service Board
City of Anniston
Anniston, Alabama

Municipalities — Salaries.

Ordinance fixing the compensation of members of the Fire Department of the City of Anniston held valid.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of October 27, 1964, is as follows:

"As attorney for the Civil Service Board of Anniston, Alabama, I would like to secure an official opinion from you on a question which has arisen before the Board concerning the pay of firemen in the City of Anniston, Alabama.

"In the last session of the Legislature of Alabama, a bill was passed by the Legislature concerning the number of hours a fireman was required to work during any one week. As a result of said change in the number of hours a fireman could work in a municipality, the Board of Commissioners of the City of Anniston passed ordinance No. 3388, of which I enclose herewith a copy.

"The question which I would like to have decided is whether or not in light of the Legislative Act, the City of Anniston has authority to pass the enclosed ordinance."

Act No. 565, Acts of Alabama 1963, page 1188, which will become effective January 1, 1965, reads in part as follows:

"Section 1. No paid firemen in the fire department of any city or town in the State of Alabama with a population of twenty-nine thousand (29,000) or more, according to the last or any subsequent federal decennial census, shall be required to work as such firemen in excess of fifty-six (56) hours in any average week of the calendar year, except as otherwise provided in Section 3.

"Section 2. The determination of such 'average week' shall consist of adding the total number of hours worked by a fireman at the end of any calendar year and dividing the total by the number of weeks actually worked by such fireman.

"Section 3. The provisions of this Act shall not apply to the chief of any such fire department"

Said Act does not regulate the compensation of the members of a municipal fire department and does not prevent a member from working in excess of fifty-six (56) hours per week if he desires to do so.

Except as limited by applicable civil service systems, the governing bodies of municipalities have full control over their fire departments and the compensation paid to firemen. Title 37, Section 429, Code of Alabama 1940, as amended by Act No. 666, Acts of Alabama 1961, page 910 and Title 37, Section 450, Code of Alabama 1940.

Ordinance No. 3388 of the City of Anniston, reads in part as follows:

"Section 1. Commencing with the first pay period in the fiscal year 1964-1965 the employees of the Anniston Fire Department are to be paid by hourly wage.

"Section 2. The hourly wage rate of each employee of the Fire Department of the City of Anniston, Alabama, is to be figured as follows:

"The gross salary being paid said employee per two week period as of 1 September 1964 is to be divided by the number of hours worked during an 'average two week period.'

"Section 3. The number of hours worked in an 'average two week

period' is to be determined by adding the total number of hours worked by a fireman in the fiscal year 1963-1964, plus 144 hours for paid vacation time, dividing the total by the number of weeks actually worked by such fireman and multiplying by two.

"Section 4. Pay for two weeks vacation is to be equal to the average pay per two week pay period for the preceding six months.

* * * * *

"Section 6. This ordinance is not to be construed as raising or lowering the salary of any employee in the Fire Department of the City of Anniston, Alabama, nor is it to be construed as to affect the minimum and maximum salaries in each classification as established by the Civil Service Board of the City of Anniston, Alabama."

The Civil Service System of the City of Anniston, was created and is controlled by Act No. 592, Acts of Alabama 1953, page 838, as amended by Act No. 115, Acts of Alabama 1961, page 155, Section 10 of said statute provides in part as follows:

"The salary to be paid each subordinate employee shall be determined by his appointing authority, and the salary to be paid each department head employee shall be determined by the city governing body; but in every case the salary paid shall be within the pay plan and pay rules and regulations established by the board and shall be no more than the Board approves"

Premises considered, I am of the opinion that Ordinance No. 3388, supra, is valid and that the compensation of each member of the Fire Department of the City of Anniston, from and after the effective date of said ordinance, must be computed in the manner prescribed therein. Of course, in accordance with the provisions of said ordinance, each member of said Fire Department must be paid an amount within his minimum and maximum classification, as established by the Civil Service Board of the City of Anniston.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 17, 1964

Hon. Lee M. Otts
County Attorney
Escambia County
Brewton, Alabama

Insurance — Counties — Constitutionality.

The governing body of a county may purchase group policies of life insurance and individual retirement policies for its employees. Such policies may not be purchased for dependents of employees, nor for those officials whose compensation could not constitutionally be increased during their respective terms.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of October 29, 1964, is as follows:

"Under authority of the provisions of Chapter 13, Section 347, et seq., Title 28, Code of Alabama Recompiled 1958, as amended, the Board of County Commissioners of Escambia County, Alabama has decided to enter into an employees' retirement system in some regards similar to the system as set out in Title 55, Section 456, et seq. of the Code. Rather than enter into such a system with the State of Alabama, it is the Board's desire to enter into a plan with the Equitable Life Assurance Society of the U. S. This plan will provide not only for retirement pay but also for the purchase of individual life insurance policies. I am sending you a copy of the minutes of the Board of County Commissioners including the resolution adopted with regard to this plan, a copy of the agreement with the trustees and other pertinent data.

"We would like to have your opinion as to whether the County can legally enter into such a retirement system, and, in particular, if the purchase of individual life insurance policies as set out in the plan would be legal."

The authorization to enter into group life, hospitalization, retirement income policies or group annuity contracts to provide a retirement plan, etc. is set out in Title 28, Sections 351(1) through 351(7), Code of Alabama 1940, as amended. Quarterly Reports of Attorney General, Vol. 55, page 105; Vol. 71, page 25.

Not only do the above-mentioned sections authorize the county to enter into such plans, but also provide for payment of premiums in full or in part, for determination of persons to be insured, kind of insurance and manner of payment of premiums, and for appropriation of funds to carry out such a program.

However, there are certain exceptions to who may be insured under these above-named subsections.

The Supreme Court of Alabama in **Opinion of the Justices**, 249 Ala. 88, 30 So. 2d 14, held that while Sections 347 to 351 were not violative of the Constitution of Alabama 1901, they were so uncertain and indefinite as to be unenforceable. The Court further held that the benefits received from group insurance thereunder might be considered as some increase in compensation. So considered, officers who have a fixed and unexpired term would not, during such term, be treated as within the group entitled to the benefits; but, as to all others whose compensation may be increased such an act was not violative of Sections 68, 94 or 284 of the Constitution and Amendment 92(Boutwell) thereto.

The effect of the above opinion of the Supreme Court is that counties could not contribute to pay premiums on group life insurance on those officers whose compensation, whether it be salary or fees, could not be increased during the term for which they were elected or appointed.

It is my opinion, therefore, that a county governing body may not pay the premiums on group life and individual retirement policies on those officials whose compensation could not be increased during their respective terms under the Constitution.

This would be also applicable to those elected or appointed officials who shall serve without compensation. Quarterly Report of Attorney General, Vol. III, page 51.

It should be further pointed out that the Board may not pay any part of the cost of insurance coverage for dependents of such officers or employees. Section 351(1-7) of Title 28, Code of Alabama 1940, makes no provision for inclusion of dependents in such group policies.

Subject to the above exceptions, the Board of County Commissioners may, in my opinion, contract for and purchase group life insurance policies and individual retirement policies on employees within the purview of Title 28, Section 351(1-7), Code of Alabama 1940, as amended.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

November 17, 1964

Honorable B. R. Winstead, Jr.
Director of Finance, City of Birmingham
City Hall
Birmingham, Alabama

Municipalities.

The City of Birmingham may expend a maximum of \$11,000 annually to reimburse the members of its Council for expenses incurred by them in attending to the business of the City.

Opinion by Assistant Attorney Gish.

Dear Sir:

Your request for an official opinion, under date of October 6, 1964, is as follows:

"A written opinion is hereby requested by the undersigned as Director of Finance of the City of Birmingham, in connection with the following:

"1. On August 25, 1964 the Governor approved Act No. 104 of the 1964 Special Session of the Legislature of Alabama providing for the granting of money for expenses to members of the governing body of a city having a population of 300,000 inhabitants or more. A photo copy of this Act is enclosed for your convenience.

"2. On September 1, 1964 the Council of the City of Birmingham enacted Ordinance No. 64-43 which granted an expense allowance of \$100.00 per month to each member of the City Council under the provisions of Said Act No. 104. A copy of Ordinance 64-43 is enclosed herewith for your convenience. The City Council is composed of nine members.

"3. If a Council member travels outside the City of Birmingham on city business, his expenses incurred on such trip, if he so requests, are reimbursed to him when authorized by separate resolution of the Council.

"You will note that said Act No. 104 provides that:

" 'The total amount of all such money granted by any such governing body shall not, during any one fiscal year of such city, exceed the sum of \$11,000.'

"Your opinion is requested upon the following question:

"Does the \$11,000.00 maximum set out in said Act 104, as applied to paragraphs 2 and 3 above, relate only to the expense allowance granted by Ordinance No. 64-43 or does it require that the amounts of reimbursement of expenses as authorized by special resolutions as set out in paragraph numbered 3 above also be included in the computation of the \$11,000.00 maximum?"

Act No. 104, Acts of Alabama 1964, approved August 24, 1964, authorizes the Council of the City of Birmingham to grant by ordinance to any of its members a reimbursement for expenses incurred by such members in attending to the business of the City. As you point out said Act further provides that the total amount of all such reimbursements granted by said Council shall not exceed the sum of \$11,000 during any one fiscal year of said City.

Ordinance No. 64-43 of the City of Birmingham, reads as follows: "Section 1. Each member of this Council is hereby granted an expense allowance of \$100.00 per month, as authorized by Act. No. 104 of the 1964 Special Session of the Legislature of Alabama.

"Section 2. The expense allowance provided for by Section 1 of this Ordinance shall be payable on the first day of each month, for the immediately preceding month, and each member of the Council receiving the same shall certify that the amount so received is for expenses incurred by such member on account of such member attending the business of the City of Birmingham."

It is obvious that that portion of Act No. 104, *supra*, which is quoted in your request places a maximum of \$11,000 on the amount which may be expended by the City of Birmingham in any fiscal year to reimburse the members of its Council for all expenses incurred by them.

Ordinance No. 64-43, *supra*, appropriates a maximum of \$10,800 annually.

Therefore, I am of the opinion that, in the event each member of said Council takes full advantage of the provisions of Ordinance No. 64-43, *supra*, only \$200 annually will be left to reimburse members of said Council under any other City ordinances.

It should here be pointed out that Act No. 104, *supra*, authorizes the reimbursement to council members of expenses actually incurred by them. The provisions of Ordinance No. 64-43, *supra*, may not be used to increase the compensation of such council members. See Quarterly Reports of Attorney General, Volume 113, pages 27 and 78; and Volume 114, page 32.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 18, 1964

Honorable T. C. Almon
Judge of Probate
Morgan County Court House
Decatur, Alabama

Licenses — License Inspector — Citation Fees

1. Under Title 51, Section 835, Code of Alabama 1940, Recompiled 1958, the license inspector or his deputy must personally serve the delinquent taxpayer with the citation in order to be entitled to the citation fee.
2. The requirement of personal service on the part of the license inspector or his deputy is not met or complied with by mailing the citation, even if the license taxpayer receives the citation.
3. Under Title 51, Section 835, supra, the citation fee is paid for the license inspector personally serving the citation, and he earns the fee when he or his deputy personally serves the delinquent therewith, regardless of what other duties he is called upon to perform.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of November 2, 1964 is as follows:

"Will you give me the benefit of your official opinion on the following question.

"Would a License Inspector be entitled to the citation fee if he did not serve the citation in person; in other words, could he serve it by mail.

"The law also requires under Title 51, Section 835, that the License Inspector meet the person cited at the Probate Judge's Office.

"Would it be legal for us to collect a citation fee if the License Inspector did not meet the person cited as required by law. You will find this about line fourteen of Section 835, of Title 51.

"Please give me the benefit of your opinion on this question also. Both are very important at this time, and I would appreciate your usual prompt attention."

Your first question is answered in the negative.

Title 51, Section 835, Code of Alabama 1940, Recompiled 1958, relates to the appointment of license inspectors and their duties and provides in material part, as follows:

" . . . It shall be the duty of the license inspector to scrutinize the records and stubs kept in the office of the probate judge, and also to examine the license records of each city or town located in the county or counties of which he has been appointed license inspector and if it shall be reported to any license inspector or come to his knowledge that any person, persons, firms or corporations have failed or refused to take out license for a business or occupation for which a license is required by the state, or have failed or refused to take out license for operating any motor vehicle or trailer for which license is required by law, the license inspector shall thereupon cite such delinquent to appear before the license inspector at the courthouse of the county in which such citation is issued and show cause why the license or privilege tax required by law has not been paid, and at the same time shall file with the probate judge of the county a copy of such citation showing service on the delinquent. (a) If the license inspector shall discover any motor vehicle being operated without a proper or legal license, he shall cite the operator of the motor vehicle, and in filing copy of such citation with the probate judge he shall show on such citation the particular motor vehicle operated without legal license, as well as the operator thereof. . . . When any license is due the license inspector shall cause the delinquent to appear before the probate judge of the county and take out the same, but such probate judge shall not have the authority to determine the liability of such delinquent for such license and shall in each case issue a license to the applicant upon the payment by him of the amount or amounts prescribed by this title. . . ."

In construing Subsection (g) of Section 353 of the Revenue Law of 1935, Acts 1935, page 559, which Subsection has been brought forward without change as Subsection (g) of Section 835, supra, of the 1940 Code, and which is hereinabove quoted insofar as it is pertinent to your inquiry, the Supreme Court of Alabama has held, as follows:

"With respect to inquiry (b), the statute, with reference to citation fees to be paid to the license inspector, so far as here pertinent, provides: 'All citations to delinquents shall be served by any lawful officer, or by the License Inspector, or his deputy, who shall be allowed as a fee one dollar and fifty cents (\$1.50) for each citation served, to be taxed against the delinquent.'

"The inspector, to serve the citation referred to in this inquiry (b), resorted to the United States mail. **This was no personal service of the citation, although, as a matter of fact, the owner of the car actually received the citation, but through the mail. This was not the service contemplated or required by the statute. To entitle the**

license inspector to the fee he must make personal service. Corpus Juris, Vol. 50, §78, page 483; Adams v. Wright, 14 Wis. 408; Bernath v. Kolosky, 82 Okl. 190, 200 P. 147; Levinson v. Oceanic Steam Nav. Co., 15 Fed. Cas. p. 422, No. 8,292; St. Paul Sav. Bank v. Authier, 52 Minn. 98, 53 N.W. 812, 18 L.R.A. 498; 50 C.J. §57, p. 468; Burt v. Fraser, 157 Ala. 574, 47 So. 572. Our statutes provide when substituted service may be resorted to. **This is not such a case.**" (Emphasis supplied.)

Henry v. Drennen Motor Car Company, 235 Ala. 559, 180 So. 563, at page 566; also see Biennial Report of the Attorney General 1936-1938, page 126, Quarterly Report of the Attorney General, Volume 92, page 43, and Volume 30, page 41.

This appears to clearly answer your first question.

Unlike the penalty, to which the license inspector is entitled by law where the license is delinquent, whether he cites the delinquent taxpayer or not, in order for the license inspector to be entitled to the citation fee he must earn it by personally serving or his deputy personally serving the delinquent with the citation. Under the decision in **Henry v. Drennen Motor Car Company**, supra, and the other authorities cited, this can be accomplished only by personal service being made by the license inspector or his deputy on the delinquent, and mailing the citation does not meet the requirement, even if the delinquent receives the citation. And even though the citation be personally served by one of the agents of the State Department of Revenue, or other officer of this state, other than the license inspector or his deputy, the license inspector would not be entitled to this fee, unless he serves the citation himself or does so acting through his deputy. The above cited authorities makes this very clear.

Your second question is answered in the affirmative, provided that the license inspector or his deputy has personally served the delinquent with the citation.

Whether or not the license inspector meets the person cited at the courthouse of the county in which the citation is issued has nothing to do with the serving of the citation or the earning of the fee for serving the citation. Under Subsection (g) of Section 835, supra, the fee is earned when the license inspector or his deputy personally serves the delinquent.

"All citations shall be served by any lawful officer, or by the license inspector, or his deputy, who shall be allowed as a fee one dollar and fifty cents **for each citation served**, to be taxed against the delinquent."

The citation fee is paid then for the license inspector or his deputy

personally serving the citation, and is earned when such service has been effected, regardless of what other duties he is called upon to perform.

Actually the provisions of the license tax laws relating to the license inspector are cumulative. The citation is nothing more than a notice of delinquency and a demand on the taxpayer for payment of the amount due for the license and penalty. The service of the citation or the matter of whether or not the license inspector meets the delinquent after he is served therewith are not prerequisites for the State to proceed either civilly or criminally to enforce the payment of delinquent license. See Title 51, Sections 131, 831, 834, etc., Code of Alabama 1940, Recompiled 1958.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

November 24, 1964

Hon. L. D. Owen, Jr.
Probate Judge
Baldwin County
Bay Minette, Alabama

Jurors and Juries — Vacancies.

1. A member of the Jury Commission vacates his office when he ceases to be a resident of the county from which he was appointed.

2. Resident as used in Title 41, Section 160, Code of Alabama 1940, means actual residence.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of November 14, 1964, is as follows:

“Would you please give me your opinion regarding a member of the Jury Commission who at the time of appointment resided in the county and was a qualified voter in the county and since has moved out of the county, but retains his voting privilege within the county. I would like to know if he can legally hold office as long

as he remains a qualified voter within the county or if he must resign after he has moved from the county. What period of time would have to elapse after he had moved provided it would be necessary for him to resign?"

My answer to your question is that even though the person here considered retains his voting residence in Baldwin County, he has vacated his office as a member of the Jury Commission by moving therefrom.

Membership of the several Jury Commissions of the State are provided for by Title 30, Section 9, Code of Alabama 1940, and the only requirement therein contained is that each member shall be a qualified elector of the county in which he is appointed.

Your attention is directed to Title 41, Section 160, Code of Alabama 1940, which reads in pertinent part as follows:

"§ 160. How offices are vacated. — Any office in this state is vacated:

.

"By ceasing to be a resident of the state, or of the division, district, circuit, or county, for which he was elected or appointed."

The Supreme Court in the case of **Baker v. Conway**, 214 Ala. 356, 108 So. 18, considered the meaning of the word "resident" as used in Section 160, *supra*, and stated its opinion to be as follows:

"[1] Unquestionably, we think, our statute requires an actual residence by the holders of public office within the political divisions for which they are appointed or elected, and which it is their duty to serve. Every consideration of policy, propriety, and public welfare points plainly to such an intendment, and our conclusion is that, when Calloway moved away from Chilton County in December, 1923, and went to Florida, where he acquired a definite domicile, to be absent 'three months, six months, or it might be five years,' under a contract to work there for four years, he ceased to be a resident of Chilton County, Ala., within the meaning of the statute, and that his office as member of the county board of education was thereby vacated. We do not mean to hold that any temporary absence by a public officer would have that effect. Each case must be decided on its own facts, with a due regard for the elements of intention and actual absence."

You are, therefore, advised that if the person here considered has actually moved from Baldwin County and is not merely temporarily absent therefrom, he has vacated his office as a member of the Jury Commission. It is to be noted from the quotation from the **Baker** case that

each case must be decided on its own facts with due regard for the elements of intent and actual absence from the county.

This opinion, of course, is advisory only. This office does not adjudicate title to office.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

December 2, 1964

Honorable J. L. Beard, Member
Elmore County Commissioners Court
Route 1
Titus, Alabama

Civil Defense — Counties

The county director or county co-ordinator of Civil Defense is appointed by the governing body of the county involved. He is merely an employee of the county and is not a public officer with a fixed term. Said appointment should be made by a majority of the members of a county governing body at a legally authorized meeting thereof, provided there is a quorum present at the meeting.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of November 23, 1964, is as follows:

"As a member of the Elmore County Commissioners, I request an official opinion on the question set out herein below:

"The Elmore County Commissioners have created for Elmore County, under the Civil Defense Act, the position of the County Director of Civil Defense or County Co-ordinator of Civil Defense. The former Director of the County has resigned and moved away, and the question has arisen as to whether his successor is to be appointed by the County Commissioners or by the Probate Judge of the County. The problem is treated in Title 37 A, Section 19(75).

"Therefore, I desire the official opinion of the Attorney General to the following questions:

"1. Is the position of County Director or County Co-ordinator of Civil Defense appointed by the Probate Judge of the County or by the Commissioners of the County?

"2. If it is your opinion that the County Commissioners appoint a Director or Co-ordinator of Civil Defense for the County, is such person appointed by the majority vote of the Commissioners?"

In answer to your first inquiry, it is my opinion that the County Director or County Co-ordinator of Civil Defense in question is appointed by the Court of County Commissioners of your county.

Section 10 of Act No. 47, Acts of Alabama 1955, page 267 (Title 37(A), Section 19(75), Code of Alabama 1940, Recompiled 1958), provides for the establishment of local organizations for Civil Defense by political subdivisions of this state. Subsection (a) provides in pertinent part as follows:

"... The governing body of the political subdivision is authorized to appoint a director who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such governing body"

This authorizes a county or municipal governing body to appoint a local director (sometimes called a co-ordinator) of Civil Defense. Neither the term nor the compensation of a county director of Civil Defense is fixed by statute. He serves at the pleasure of said governing body, and his salary is fixed by such body. He is merely an employee of a county and is not a public officer—Letters to Honorable C. W. McKay, Jr., City Attorney, Sylacauga, Alabama, dated August 15, 1961, and Honorable W. M. Griffin, Clerk of Town of Sumiton, Alabama, dated October 7, 1964.

The status of said director or co-ordinator as mere employee of the county and not as a public officer with a term of office precludes the question of the appointment to fill a vacancy for the unexpired term of a public office.

Under the specific terms of the above quoted provision of law, the position in question is filled by appointment of the governing body of the political subdivision involved, which in the instant case is the Court of County Commissioners of Elmore County.

In answer to your second inquiry, it is my opinion that the appointment under consideration should be made by a majority of the members of the Court of County Commissioners present at a legally authorized meeting thereof, provided there is a quorum present at said meet-

ing.—Title 12, Sections 8 and 21, Code of Alabama 1940, Recompiled 1958; Quarterly Report of Attorney General, Volume 30, page 16. See **Marion County v. Terrell**, 251 Ala. 547, 38 So. 2d 476.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

December 14, 1964

Honorable Edward D. McLaughlin
Judge

Juvenile and Domestic Relations Court
Calhoun County
Anniston, Alabama

Calhoun County — County Courts — Courts — Words
and Phrases.

Juvenile and Domestic Relations Court of Calhoun
County not a 'county court' within meaning of act
granting expense allowance to judges of any 'county
court created by local law' in counties of 76,000 to
96,000 population.

Opinion by Assistant Attorney General Webb.

Dear Judge McLaughlin:

I have received your letter of November 23, 1964 in which you request an official opinion of this office as follows:

"Will you be kind enough to give me your opinion as to whether or not the 'Juvenile and Domestic Relations Court of Calhoun County' created by Act No. 251 of the Regular Session, 1953 with jurisdiction as stated in the Act and to which has been added bastardy by Act No. 295, Special Session, 1961 can be considered a county court thereby qualifying the Judge thereof to draw his warrant upon the County Treasurer for \$100 per month expense allowance in pursuance of the authority of Act 198, Special Session 1964.

"The passage of Act No. 251 and its subsequent approval by the voters of Calhoun County in referendum would seemingly place the 'Juvenile and Domestic Relations Court of Calhoun County' among the counties excepted by virtue of Section 381, Title 13 and

its status as a county court confirmed by the appropriate sections of Act No. 251 itself, in particular, Sections 1, 3, 4, 11, and 12.

"Before drawing a warrant against the County Treasurer, I should appreciate your opinion as to whether it may be lawfully honored.

"Act No. 198, Special Session 1964, provides, in pertinent part, as follows:

"In addition to all other compensation and allowances provided by law, the judge of any county court created by local law of any county having a population of not less than 76,000 nor more than 96,000, according to the last or any subsequent federal decennial census, shall receive an expense allowance of one hundred dollars (\$100) per month, payable out of the county treasury, upon his warrant drawn upon the county treasurer or other proper custodian."

The act, as noted, is a general act of local application, specifically referring to any "county court created by local law" but fails to define the term "county court." However, the title of the act specifies:

"Relating to counties having a population of not less than 76,000 nor more than 96,000, providing for the payment of an expense allowance to **the judge of the county court** in any such county. (Emphasis supplied.)

Under the general law of Alabama, "county courts" are those created under the provisions of Chapter 6 of Title 13, Code of Alabama Recompiled 1958, and have original jurisdiction, concurrent with the circuit courts, of all misdemeanors committed in their respective counties. Title 13, Section 321, *supra*. Except for the general law establishing and regulating county courts, the term "county court" has no special significance in Alabama and is not provided for in the Constitution of Alabama 1901. It is simply a designation given by the Legislature to identify certain inferior courts. Generally, county courts were first created by the Penal Code of 1866, with the purpose of taking a certain part of the circuit and justice courts' jurisdiction and duties and transferring the same to the probate courts or judges thereof. Historically, the jurisdiction has been criminal. See the discussion in **State v. Burke**, 175 Ala. 561, 57 So. 870.

In view of the general statutes establishing "county courts" within the State of Alabama, I am of the opinion that that term should not be confused with the term "court of the county." See **People v. Rucker**, 5 Colo. 455, 460, 10 Words & Phrases 85, 86. I am also of the opinion that in order for Act 198, *supra*, to have a proper application, the Legislature must have intended by the phrase "county court" an inferior court created in lieu of the general county court operating within the counties specified by the population bracket.

I note that according to the 1960 federal decennial census, Calhoun County is the only county within the population bracket established by Act No. 198, supra. I also note that there does exist the Calhoun County Court created by the provisions of Act No. 106, Acts of Alabama 1951, page 327, and that this court has the jurisdiction of the general county courts with additional jurisdiction specified.

I have carefully reviewed the provisions of Act No. 251, Acts of Alabama 1953, page 316, creating the Juvenile and Domestic Relations Court of Calhoun County and I am of the opinion that the same is not a "county court" within the meaning of Act No. 198, supra. See also *In re Clausi*, 73 N. E. 2d 548, 550, 296 N. Y. 354. It therefore follows that your warrant may not be lawfully honored by the County Treasurer.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 16, 1964

Honorable J. M. Kimbrough
Chairman
Court of County Commissioners
Washington County
Chatom, Alabama

Constitutional Amendments — Constitutionality —
Counties — Forests — Funds — Gasoline and Gasoline
and Gasoline Tax — Gasoline Fund — Road and
Bridge Fund — Washington County.

1. Constitutionality of general act of local application providing for population spread of 15,300 to 15,400 discussed.
2. Act imposing new, different and additional duties on county officials authorizing increase thereby in compensation may not take effect until the end of the term. Amendment 92, Constitution of Alabama 1901.
3. Ex-Officio District Forest Wardens of Washington County may not be paid from Gasoline Fund or the Public Highway and Traffic Fund.
4. Ex-Officio District Forest Wardens may be paid from the General Fund or surplus in the Road and Bridge Fund.

Opinion by Assistant Attorney General Webb.

Dear Judge Kimbrough:

I have received your request for official opinion dated November 11, 1964 which reads as follows:

"I would like to ask your opinion on the following question:

"Act 482, Acts of 1961, Regular Session, page 542, establishes forest protection districts in counties having a population of not less than 15,300 nor more than 15,400 and provides for \$100.00 per month ex-officio District Forest Warden salaries for each commissioner to be paid from funds in the county treasury not otherwise appropriated.

"The salary of the Forest Wardens is now being paid from the Gasoline Fund, after the conclusion that the provisions of Act 482 would include the Gasoline Fund. Quarterly Report of the Attorney General, Volume 70, page 35, discusses the special use of the funds derived from the Gasoline tax.

"Your opinion is requested to determine the legality of payment of Forest Wardens salaries from the Gasoline Fund and from the Public Highway and Traffic and the Road and Bridge Funds."

Under the provisions of Act No. 482, Acts of Alabama 1961, page 542, cited by you, every county having a population of not less than 15,300 nor more than 15,400 is divided into four forest protection districts coinciding with the commissioners' districts of the county and the several members of the Court of County Commissioners are made Ex-Officio District Forest Wardens for their respective districts, receiving a salary for the performance of such duties of one hundred dollars (\$100.00), per month, to be paid out of any funds of the county treasury not otherwise appropriated.

I have some serious doubts as to the constitutionality of Act No. 482, *supra*, for the reason that, in all probability, the courts would hold that this act is a designation of your county rather than an act based on population classification. See **Couch v. Rodgers**, 253 Ala. 533, 45 So. 2d 699. However, this act may still be followed until a declaration of its invalidity by a court of competent jurisdiction. See Title 41, Section 58, Code of Alabama 1940, Recompiled 1958.

One further qualification is necessary to this opinion. Amendment 92 to the Constitution of Alabama 1901 prohibits the imposition of new, different and additional duties on officials to increase their compensation during the term of office. Our courts, in ruling on similar prohibi-

tions contained in the Constitution, have held that such acts granting the increase in compensation are suspended by operation of law until the expiration of the present term of office. See **Hawkins v. Jefferson County**, 233 Ala. 49, 169 So. 720, and **State Docks Commission v. State ex rel. Jones**, 227 Ala. 521, 150 So. 537. See also Quarterly Reports of Attorney General, Volume 78, page 51; Volume 89, page 7; Volume 94, page 25; and Volume 113, page 44. A careful consideration of Act. No. 482, supra, leads to the conclusion that, though the Commissioners of Washington County under such act serve as "ex-officio" District Fire Wardens, such activity is but an imposition of new and additional duties for which a salary increase is purported to be granted under the act and as such is prohibited under Amendment 92, supra. Therefore, it is the opinion of this office that payment to the ex-officio District Forest Wardens for the performance of their duties may not be made from any fund of Washington County until the expiration of the commissioners' present term of office. Quarterly Reports of the Attorney General, Volume 78, page 51; Volume 89, page 7; Volume 94, page 25; and Volume 113, page 44.

In answer to your specific question, the Gasoline Fund and the Public Highway Traffic Fund are both subject to the restrictions of Amendment 93 to the Constitution of Alabama 1901, which provides as follows:

"No moneys derived from any fees, excises, or license taxes, levied by the state, relating to registration, operation, or use of vehicles upon the public highways except a vehicle-use tax imposed in lieu of a sales tax, and no moneys derived from any fee, excise, or license taxes, levied by the state, relating to fuels used for propelling such vehicles except pump taxes, shall be expended for other than cost of administering such laws, statutory refunds and adjustments allowed therein, cost of construction, reconstruction, maintenance and repair of public highways and bridges, costs of highway rights-of-way, payment of highway obligations, the cost of traffic regulations, and the expense of enforcing state traffic and motor vehicle laws. The provisions of this amendment shall not apply to any such fees, excises, or license taxes now levied by the state for school purposes for the whole state or for any county or city board of education therein."

This amendment has been subsequently implemented by Title 23, Section 47(1), Code of Alabama 1940, Recompiled 1958 (1963 Cumulative Pocket Part), and, further, insofar as the Gasoline Fund is concerned, by the provisions of Title 51, Sections 655(1) and 657, Code of Alabama 1940, Recompiled 1958. All sections contain the similar restrictions for both the Gasoline Fund and the Public Highway and Traffic Fund as provided in the constitutional amendment and such funds, in my opinion, may not be used for other than the cost of constructing, reconstructing, maintaining and repairing of public roads and bridges

or the payment of the commissioners' salaries insofar as the same relate to these duties. I have reviewed the duties provided for in Chapter 4 of Title 8, Code of Alabama 1940, Recompiled 1958, as provided for in Act No. 482, supra, and, in my opinion, those duties are completely unrelated to the road and bridge work of the county. I am, therefore, of the opinion that these salaries of the Ex-Officio District Forest Wardens of Washington County may not be paid from the Gasoline Fund or the Public Highway and Traffic Fund.

Prior to November 11, 1962, the Road and Bridge Fund was specifically restricted for use in erection of necessary public buildings, bridges or roads of the county, under the provisions of Section 215 of the Constitution of Alabama 1901. Amendment 208 proclaimed ratified on November 11, 1962, however, provides that the proceeds in excess of amounts payable on bonds, warrants or other securities issued by the county may be spent for general county purposes in such manner as the Court of County Commissioners may determine.

I am, therefore, of the opinion that the Ex-Officio District Forest Wardens may, during the next term of office, be paid from the surplus or excess of the Road and Bridge Fund as well as the General Fund of the county. As to General Fund use for this purpose, note Quarterly Report of Attorney General, Volume 25, page 16.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 16, 1964

Honorable Wilson Morgan
Commissioner, City of Decatur
P. O. Box 412
Decatur, Alabama

Contracts — Corporations — Municipalities — Officers and
Offices

The municipality may deal with an incorporated firm which has as one of its officers and stockholders a commissioner of the municipality.

Opinion by Assistant Attorney General Webb

Dear Sir:

I have received your letter of November 20, 1964 in which you request my official opinion as follows:

"Your official opinion is requested regarding the following matter:

"I am Commissioner and Member of the Board of Commissioners of the City of Decatur, Alabama, presently serving a three-year term. My principal business is serving as President and Chief Executive Officer of Security Mutual Finance Corporation, of which I am a minority stockholder. Security Mutual Finance Corporation owns all of the stock in the Wilson Morgan Agency, Inc., an insurance agency doing business in Decatur, Alabama, of which I am also President.

"The Municipal Utilities Board of the City of Decatur functions under the provisions of a Local Act which provides for its management by a three-man board, which board is appointed by the governing body of the City of Decatur on staggered terms. This board has asked the insurance agents of this city to submit competitive quotations for their insurance business, and the Wilson Morgan Agency, Inc., is desirous of competing for this business.

"In view of my position as Commissioner on the Board of Commissioners of the City of Decatur, and my connection with the Wilson Morgan Agency, Inc., your advice to the following questions is requested.

"(1) Is the Wilson Morgan Agency, Inc., prohibited from writing, as agent for various insurance companies, insurance for the benefit of the Municipal Utilities Board of the City of Decatur, or for any other board or agency of such city, including the City of Decatur itself, and accepting commissions for such, by virtue of my holding the Office of Commissioner and likewise are such boards, agencies and the City of Decatur itself prohibited from expending their funds therefor?

"(2) Is the Wilson Morgan Agency, Inc., prohibited or limited in any manner in acting as agent for certain corporate sureties who execute bonds made by third party principals payable to the City of Decatur, or any of its boards and agencies and accepting commissions for such, by virtue of my holding the Office of Commissioner in the city of Decatur, and likewise, are the boards and agencies and the City of Decatur itself, prohibited from accepting the same?"

I understand from previous correspondence with the City Attorney that the City of Decatur is organized under Article I of Chapter IV, Title 37, Code of Alabama Recompiled 1958. I further note that the Municipal Utilities Board was created by Act No. 89, Local Acts of Alabama 1939, page 47, as amended by Act No. 14, Acts of Alabama 1949,

page 26. No restrictive clause is contained in the acts creating the Municipal Utilities Board as to its contracting with officers of the municipality.

Title 37, Section 77, Code of Alabama Recompiled 1958, however, prohibits a commissioner of the City of Decatur from entering into any contract for work, services or materials to be furnished or performed for the city. This office has held that an incorporated municipal utility board such as that created by Act No. 89, *supra*, is a sub-division of a municipality. Quarterly Report of Attorney General, Volume 102, page 15.

This office has also held, however, in construing Section 77, *supra*, and similar statutes, that such do not prevent a municipality from dealing with an incorporated firm which has as its officers or stockholders officials of the municipality. See Quarterly Report of Attorney General, Volume III, page 44, and informal opinions to Honorable A. J. Coleman, City Attorney, City of Decatur, dated November 6, 1961 and October 26, 1961. In dealing with similar sections affecting county officials, this office has further held that such officials may operate as agents of insurance companies in dealing with the county governing bodies on the theory that insurance is not a contract for work, services or materials within the meaning of the statutes. Quarterly Report of Attorney General, Volume 17, page 48.

In applying the reasoning adopted in the previous opinions, I am, therefore, of the opinion that the City of Decatur may deal with the Wilson Morgan Agency, Incorporated, as noted in your request. Your questions are, accordingly, answered in the negative.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

December 16, 1964

Hon. L. D. Wall
Sheriff
Madison County
Huntsville, Alabama

Costs and Fees — Prisons and Prisoners — Sheriffs.

1. When more than one prisoner is removed by the sheriff with one trip, only one per diem and mileage may be charged, under provisions of Title II, Section 100, Code of Alabama Recompiled 1958.

2. On removals from one county to another, the sheriff is authorized to charge for only such guard or guards as may be allowed, under provisions of Title 15, Section 183, Code of Alabama Recompiled 1958, regardless of number of prisoners to be transported.

Opinion by Assistant Attorney General Webb.

Dear Mr. Wall:

I have received your letter of November 27, 1964 in which you request an official opinion of this office as follows:

"You are respectfully requested to furnish an official opinion on the following question.

"In felony cases where there is more than one prisoner transferred at the same time, am I entitled to 10c per mile and guard fee per prisoner?

"I will greatly appreciate an answer at your earliest convenience."

Your request fails to state what type of removal is referred to other than the fact that the same is a felony. However, I presume the removal is one from county to county, payment of which is to be perfected under Title 11, Section 100, Code of Alabama Recompiled 1958. Note Quarterly Report of Attorney General, Volume 28, page 68.

Under this presumption, you are advised that this office has previously ruled that, in effecting such removals, the sheriff is entitled to only one per diem payment and one mileage payment, regardless of the number of prisoners to be removed. Quarterly Reports of Attorney General, Volume 111, page 73, Volume 29, page 36; Biennial Reports of Attorney General, 1930-32, page 406, 1926-28, page 114. There is, however, one qualification which may make a difference, that is, where the condition surrounding the removal necessitates the use of more than one vehicle for such multiple removals. Informal opinion of Attorney General to Wilmer T. Shields, Sheriff, Marengo County, dated April 2, 1962. In the event that your removal meets these conditions, you should request another opinion setting out the conditions in detail.

The opinions above-cited are based upon the theory that, if the sheriff performs only one service and incurs only a single unit of expense, he should not be paid double simply because more than one prisoner was involved in the removal.

The "guard fee" referred to in your request is an allowance for guards necessary to the removal and, in this regard, your attention is invited to the provisions of Section 183 of Title 15, Code of Alabama Recompiled 1958, which reads as follows:

"Whenever the sheriff makes application for the employment of a guard in the removal of a prisoner, such application must be in writing and briefly set forth the facts necessitating the employment of a guard, which shall be verified by oath and filed in the office of the judge of probate of the county to which such removal is made, and the judge making the order of removal, if he grants the application for a guard, shall indorse thereon that he has investigated the facts and believes a guard to be necessary. But no guard shall be obtained for the removal of a prisoner charged with a misdemeanor, except upon the order of the governor, or a circuit judge, in cases when it is necessary to protect the prisoner from violence."

I am, therefore, of the opinion that on such removals from one county to another the sheriff is authorized to charge for only such guard or guards as may be allowed under Section 183, Title 15, *supra*, regardless of the number of prisoners to be removed. Biennial Reports of Attorney General, 1930-32, page 406, 1926-28, page 114, informal opinion of Attorney General to Honorable Conrad Fowler, Chairman, Shelby County Board of Revenue & Control, under date of April 10, 1961.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 16, 1964

Honorable Frank B. Watson
Justice of the Peace
P. O. Box 581
Atmore, Alabama

Escambia County — Inferior Courts — Justices of the Peace — Jurisdiction.

Neither Act No. 665, Acts of Alabama, Regular Session 1951, Vol. II, p. 1143, nor Act No. 412, Acts of Alabama, Regular Session 1963, Vol. II, p. 914, establishing an Inferior Court for Escambia County, Alabama, took away the civil jurisdiction of Justices of the Peace within their precincts, but such jurisdiction is concurrent subject to the limitations of such jurisdiction as otherwise provided by law.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Reference is made to your letter of December 4, 1964 requesting my opinion as to whether or not local legislation establishing the Inferior

Court of Escambia County, as originally provided for, or as affected by any legislation thereafter, has in any way restricted your civil jurisdiction within your precinct.

I find that by Act No. 665, Acts of Alabama, Regular Session 1951, Vol. II, p. 1143, there was created in Escambia County, Alabama, in lieu of the county court and the juvenile court, a court with county-wide jurisdiction of certain criminal cases and certain civil actions, causes, matters, proceedings and cases, known as "The Inferior Court of Escambia County, Alabama." This Act abolished the county court and the juvenile court and empowered the Inferior Court to exercise jurisdiction in certain cases cognizable before the Circuit Court, County Court, Juvenile Court, or Justices of the Peace, or courts created in lieu thereof, and all courts of like jurisdiction. However, this Act did not specifically take away the civil jurisdiction of the Justices of the Peace within their precincts.

Act No. 412, Acts of Alabama, Regular Session 1963, Vol. II, p. 914, approved August 30, 1963 and effective on the first of the month next following the date of its enactment, replaced the court created by Act No. 665, Regular Session 1951, abolished that court, and provided for transfer of pending cases to a new Inferior Court with county-wide jurisdiction of criminal cases and civil actions as provided for therein. This Act, likewise, did not specifically take away the civil jurisdiction of Justices of the Peace within their precincts.

Therefore, in my opinion, the civil jurisdiction of the Inferior Court of Escambia County, Alabama, is concurrent with that of the several Justices of the Peace within the county, subject to the limitations of such jurisdiction as otherwise provided by law.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 21, 1964

Honorable T. C. Almon
Judge of Probate, Morgan County
Decatur, Alabama

Justices of the Peace — Vacancies — Officers and Offices.

Failure of one elected to office of Justice of the Peace to file an official bond within forty days after the declaration of the

results of the election by the county board of supervisors vacates the office and the bond cannot thereafter be filed unless the person involved is subsequently appointed to the office.

Opinion by Assistant Attorney General Hall.

Dear Judge Almon:

I have your letter of December 15, 1964, which is as follows:

"Will you please interpret for me Section 45, of Title 41, of the Code of Alabama of 1940.

"The Canvassing Board of Morgan County canvassed their ballots on the 5th day of November, 1964.

"Under the above cited Section it requires a bond to be filed in the proper office within forty days after the declaration of the election.

"Would that mean a declaration of the election by the local Canvassing Board, or the State Canvassing Board. I have in mind a Justice of Peace who has not as yet qualified by filing his bond, and more than forty days have expired as of today."

Title 41, Section 45, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"Time of filing; exception.—In all cases such bonds must be filed in the proper office within forty days after the declaration of election, or after the appointment to office, except bonds of tax assessors and tax collectors which shall be filed on or before the first day of September next after their election or appointment."

Title 41, Section 47, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"Failure to file bond vacates office.—If any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office; and in such case, it is the duty of the officer in whose office such bond is required to be filed, at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases."

Title 41, Section 18, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"Terms of office of county officers.—The sheriff, one coroner, county commissioners, or members of board of revenue, or boards or courts of like jurisdiction, one county treasurer, when elective,

two justices of the peace, and one constable for each election precinct, shall hold their respective offices for the term of four years from the first Monday after the second Tuesday of January next after their election, and until their successors are elected and qualified."

As to bonds required of Justices of the Peace, see Title 13, Section 388, which provides as follows:

"Before entering on the duties of the office, they must give bond and surety, payable and conditioned as provided by law, in the sum of one thousand dollars, which bond must be approved by the judge of probate of the county, and filed and recorded in his office."

Title 17, Sections 199 and 200, Code of Alabama 1940 (Recompiled 1958), provides the means for canvassing votes after an election and the declaration of the results of an election for county officers. Since Title 41, Section 18, provides that Justices of the Peace are county officers, in my opinion, Title 17, Section 200, governs the declaration of the results of an election for such officers.

Since the Justice of the Peace has not qualified by filing his bond within 40 days after the declaration of the result of the election as required by Title 41, Section 45, in my opinion, he has vacated his office under the provisions of Title 41, Section 47.

If the person in question is subsequently appointed to fill the vacancy, he will be required to file a bond before entering upon the duties of his office. See Quarterly Report of Attorney General 1934-36, page 227.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

December 21, 1964

Honorable James E. Moore
County Attorney
Mobile County Courthouse
Mobile, Alabama

Rewards — Counties — State and State Departments —
Municipalities.

Counties have no authority to offer and pay rewards for the apprehension and/or conviction of offenders against

the criminal laws of the state. The Governor and municipalities of this state are so authorized under certain circumstances.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of December 15, 1964 is as follows:

"On behalf of the County Commission of Mobile County I am submitting the following question for your reply and advice: Does the County Commission of Mobile County have the legal authority to offer a reward for the arrest and conviction of anyone caught destroying or damaging County road signs such as stop signs or road name signs, etc.? There has been a rash of this type destruction in this County for some time, and the County Commission is seeking an effective means of combating this problem.

"I find no expressed statutory provision for such authority in the County Commission. However, the Supreme Court of Alabama did hold that in the case of Central Railroad and Banking Company, Et al., versus Cheatham, 85 Alabama 292, 4 Southern 828, that individuals and corporations have the authority to offer rewards for the arrest and conviction of persons criminally damaging their property. In that case the railroad, a corporation, offered a reward for the arrest and conviction of parties destroying the railroad tracks. The Court held that this authority was implied in a corporation since it had a right under the law to protect its extended properties and to use reasonably effective means to that end. This case appears quite similar to the County's problem here, with roads spread all over the County, making it very difficult to apprehend offenders who destroy by night or in secluded areas, etc.

"I will appreciate your advice whether the County Commission has such authority."

I am of the opinion that your inquiry should be answered in the negative.

In the absence of contrary constitutional provisions, the legislature of a state may offer rewards to those who shall initiate or carry on prosecutions for a crime; or it may authorize the offering of such rewards. The authorities very generally agree, however, that municipalities and **other subdivisions of the state** have no power to offer rewards for the apprehension of offenders against the criminal laws of the state,

unless a statute or charter provision confers such power, as is sometimes done. — 46 Am. Jur. 109, Rewards, Section 8.

Title 15, Chapter 2, Article 1 (Sections 44-47), Code of Alabama 1940, Recompiled 1958, contains statutory provisions regarding rewards. Sections 44 and 45 authorize the Governor to offer and pay rewards in certain circumstances. Section 46 is the authority of the municipalities to offer and pay rewards. I am unable to find any statutory provisions dealing with the expressed or implied authority of a county, a political subdivision of a state, to offer and pay rewards.

There being no specific statutory authority, either expressed or implied, for a county to offer and pay rewards, it follows that it has no right to do so. A county is clothed with only such power as is specifically provided by statute or necessarily implied. If our Legislature had intended to give counties authority to offer and pay rewards, it could have easily done so as it did in the cases of the Governor and municipalities. This holding is in accord with the former rulings of this office over a period of many years.—Biennial Report of Attorney General, 1930-32, page 62; Quarterly Reports of Attorney General, Volume 6, page 14, Volume 17, page 398, Volume 30, page 97.—Letters to Honorable A. B. Foshee, County Attorney, Chilton County, dated March 24, 1958; Honorable Robert K. Bell, County Attorney, Madison County, dated May 10, 1961. Cf. **Hungerford v. Moore**, 65 Ala. 232.

I do not think that the general implied authority of individuals and corporations to offer and pay rewards is applicable to a county, a political subdivision of a state, which receives its power and authority by virtue of statutory law.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

December 31, 1964

Honorable R. E. Charlton, Clerk
Town of Autaugaville
Autaugaville, Alabama

Constitutional Amendments — Licenses — Municipalities —
Streets — Taxation — Words and Phrases.

1. Municipality may pay cost of grading, paving, resurfacing, engineering, repairing, drainage, street lights, traffic lights, stop signs, corner street marking, curbing and sidewalks from

distribution of license taxes on motor vehicles. Title 51, Section 713, Code of Alabama Recompiled 1958 (1963 Cumulative Pocket Part).

2. Municipality may not pay cost of enforcement of motor vehicle laws from distribution of license taxes on motor vehicles. Title 51, Section 713, *supra*.

Opinion by Assistant Attorney General Webb.

Dear Mr. Charlton:

I have received your letter of December 14, 1964 in which you request my official opinion as follows:

"In reference to State Shared Motor Vehicle Tax Revenues—the Use of:

"Title 51, Section 713, Code of Alabama 1958 Recompiled Edition, 1963 Cumulative pocket parts state that the distribution from motor vehicle and trailer licenses in excess of 20% shall be used exclusively for the construction, maintenance and improvement of highways and streets.

"Amendment number 93 to the Constitution of Alabama 1901 provides as we interpret it that it can be expended for administering such laws, construction, reconstruction, maintenance and repair, cost of Right of Ways, traffic regulation and enforcement of motor vehicle laws.

"Members of Council desire an opinion from you as follows:

"Does Construction cover: Grading, paving, resurfacing, engineering.

"Does maintenance cover: General repairs; drainage ditching (This Town does not have sewers; there are numerous artesian wells all over the town, the water entering ditches along streets.

"Does improvement cover: Street lights, traffic lights, stop signs, corner street marking, curbing and sidewalks.

"Administration: 5% of 80% from the amount received. (estimated)

"Does Enforcement cover: Paying traffic officer and auto expense for same.

"We will appreciate detailed information as to the uses mentioned or any other coverage that might apply in your opinion."

Title 51, Section 713, Code of Alabama Recompiled 1958 (1963 Cumulative Pocket Part), provides for the distribution of license taxes on motor vehicles and its expenditure by municipalities, in pertinent part, as follows:

"All amounts of motor vehicle and trailer license taxes received by a city or town hereunder in excess of twenty percent of such motor vehicle and trailer license taxes shall be used exclusively for the construction, improvement, and maintenance of highways or streets and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues may have been pledged and for no other purposes."

The obvious intent, from the wording of the statute, was to include within the definition of "street" a broad meaning. Cf. Quarterly Report of Attorney General, Volume 95, page 47. I am, therefore, of the opinion that to construct, improve and maintain streets would include those items mentioned by you, i.e., grading, paving, resurfacing, engineering, general repairs, drainage, street lights, traffic lights, stop signs, corner street marking, curbing and sidewalks.

Amendment No. 93 to the Constitution of Alabama 1901 further provides for expenditure of license receipts for enforcement of motor vehicle laws. However, as previously noted by this office, Amendment No. 93 was not self-executing but was a mere limitation on the use which the Legislature might authorize to be paid from the money derived from the sources specified and thereby required enactment of further enabling legislation to implement such amendment. See Quarterly Reports of Attorney General, Volume 87, page 26, Volume 98, page 27.

Enabling legislation for benefit of municipalities on use of the motor vehicle license receipts is provided for in Section 713 of Title 51, supra, and is, likewise, by its very wording, a limitation on the use of the proceeds appropriated. Section 713, supra, specifically fails to provide for use of such distribution for purposes of enforcement of motor vehicle laws, and, in fact, states, "for no other purposes" than those specifically designated in the statute. I am, therefore, of the opinion that the Town of Autaugaville may not pay the cost of enforcement, traffic officer and traffic automobile expenses from the proceeds noted.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

I N D E X

**QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE
PERIOD FROM SEPTEMBER 30, 1964 THROUGH DECEMBER 31, 1964**

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During the period covered by this Quarterly Report of the Attorney General, October 1, 1964 through December 31, 1964, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

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Industrial Development — Funds	Guy D. Roberts	Dec. 28	249
Insurance — Retirement	Lee M. Otts	Dec. 16	225
Juries — Clerical Assistants	Slaught McMahan	Nov. 17	140

Libraries — Municipalities	Nov. 2	96
Limestone County — Bids	Oct. 23	66
Sheriffs — Jails	Nov. 24	159
Supplies — Criminal Law	Dec. 17	228
Winston County — Coroner	Oct. 8	21
CRIMINAL LAW		
Clerks of Court — Motor Vehicles	Dec. 2	186
Common Carriers — Firearms	Dec. 3	Dept. Pub. Saf.
D.W.I. — Joiner	Dec. 3	181
Fair Trade — Civil Actions	Dec. 10	212
Municipalities — Oaths and Warrants	Nov. 5	122
Psychologist — Privilege Communication	Oct. 23	58
Rewards — Definition	Dec. 22	Sol. File
John R. Phillips		
Grady Holland		
James Record		
W. Paul Ragsdale		
Sue N. Knowles		
M. S. Nelson		
Albert J. Lingo		
D. L. Rosenau, Jr.		
Armistead I. Selden, Jr.		
Earl D. James		
R. Garrett Phillips		
Lewey Stephens, Jr.		

ELECTIONS

Absentee Voter — Registration	Oct. 14	11
Ballots — Write-ins	Oct. 14	10
Board of Registrars — Clerical Assistants	Oct. 14	6
Candidates — Officials	Oct. 6	7
Cherokee County — Voting Machines	Oct. 21	51
	&	
	Oct. 27	51
Mrs. Nathaniel Welch	Oct. 3	38
Carl D. NeSmith	Dec. 1	169
Patricia Yamanoha	Nov. 13	130
Larry Isberg	Oct. 27	70
Chris Bergin	Nov. 24	156
John Donald Reibly	Dec. 3	183
Miss Margo Shinnamon	Dec. 8	201
Electors — Unpledged		
Expenses — Parties		
Laws — Discussion		
Parties — Ballots		
Presidential Elections —Ballots		
(Same)		
(Same)		

Subject Matter	Name of Addressee	Date	File No.
Registration — Personal Appearance	John B. Walker	Nov. 9	117
Schools — Counties	John R. Hargis	Dec. 16	224
Schools — Time	Dr. Geo. L. Layton	Dec. 16	Dept. Ed.
Sheriffs — Qualifications	Hubert B. Foster	Nov. 16	129
FUNDS			
Schools — Indebtedness	Boyce S. Albright	Oct. 8	1
State Board of Education — Administration	Dr. Francis Keppel	Nov. 6	111
HEALTH AND HEALTH DEPARTMENT			
Hospitals — Old Age	Mrs. Howard A. Smith	Dec. 7	204
Medical Association — Elections	Warren White	Oct. 5	39
Water Improvement — Pollution	Arthur M. Beck	Oct. 1	Dept. Health
INSANE PERSONS			
Commitment — Revocation	G. C. Brittain	Dec. 22	208
INSURANCE			
City and County Boards of Education — Liability	John Deason	Oct. 20	44
Deposits — Release	Mary T. Garner	Oct. 13	St. Treas.
(Same)	Mary T. Garner	Nov. 23	St. Treas.
(Same)	Mary T. Garner	Dec. 28	St. Treas.
Municipalities — Employees	Earle C. Moody	Dec. 4	185
Municipalities — Motor Vehicles	J. M. Vann	Dec. 18	78
MUNICIPALITIES			
Benton, City of — Reinstating	Harrell Hammonds	Dec. 21	234
Bonds — Rentals	W. T. Purvis	Dec. 21	239

Buildings — Renovation	L. V. Atkinson	Nov. 24	160
Cater Act — Minerals	Leonard Beard	Oct. 19	Plan. Bd.
Council — Compensation	Mrs. Annie Mae Gable	Oct. 7	14
(Same)	R. E. Pate	Oct. 29	64
Departments — Discussion	Joe Starnes, Jr.	Oct. 19	42
Dothan — Civil Service	Earle C. Moody	Oct. 2	223
Employees — Civil Service	O. B. McCullough	Nov. 3	104
Extension — School Districts	Joe H. Payne	Dec. 22	242
Firemen — Compensation & Hours	Walter W. Moreland	Dec. 14	213
(Same)	Walter W. Moreland	Dec. 21	213
Industries — Territory	Earle C. Moody	Dec. 17	223
Licenses — ABC Beard	Norman K. Brown	Nov. 4	102
Licenses — Jurisdiction	Claud J. Smithson	Dec. 17	229
Motor Vehicles — Abandonment	Carl E. Maye	Oct. 8	26
Motor Vehicles — Off Street Parking	McLean Pitts	Nov. 16	134
Official — Contractors	Carlton Mayhall, Jr.	Oct. 6	27
Official — Public Utilities	G. W. Nicholson	Oct. 26	77
Official — Utility Board	William C. Gullahorn	Nov. 3	93
(Same)	William C. Gullahorn	Nov. 5	93
Sales — Intoxicating Liquors	J. Thomas King	Nov. 16	135
Sewers — Territory	Earle C. Moody	Dec. 15	223
Voting — Procedure	J. M. Vann	Oct. 28	78
Water and Gas Board — Membership	Joe A. Poe	Oct. 5	31
(Same)	Jack Fendley	Oct. 9	12
OFFICERS AND OFFICES			
County Boards of Education —	Robert T. Wilson	Oct. 15	40
School Trustees	A. J. Longshore	Dec. 28	250
Justices of Peace — Collections	Harry L. Parker	Dec. 29	248
Justices of Peace — Jurisdiction			

Subject Matter	Name of Addressee	Date	File No.
Municipalities — Board of Pharmacy	Elbert W. Gibbs	Nov. 19	Bd. of Phar.
Municipalities — Civil Defense	W. M. Griffin	Oct. 7	15
Municipalities — Employees	L. B. Wilson	Dec. 17	230
Municipalities — Judgments	Buford Rowe	Dec. 21	238
Municipalities — United States	F. S. Hagan	Dec. 17	227
Supernumerary Solicitors — Qualifications	Ralph P. Eagerton	Oct. 21	Ex. of Accts.
Teachers — County Boards of Education	George W. Long	Oct. 1	81
PUBLIC UTILITIES			
Sales — Public Service Commission	Ed Pepper	Nov. 10	Pub. Serv. Comm.
SCHOOLS			
Colleges — Military	Dee E. Worrell	Oct. 30	86
Construction — Bids	W. Candler McGowan	Dec. 15	222
Employees — Leave	Leon van Leeuwen	Oct. 29	65
Handicapped — Fees	Harry Lyons	Oct. 7	24
TAXATION			
Corporations — NAACP	Phillip J. Hamm	Oct. 8	Dept. Rev.
Filing Tax — Credit Union	J. Paul Meeks	Nov. 25	158
Filing Tax — Lease Extension	G. C. Brittain	Dec. 8	208
Filing Tax — National Banks	John L. Moore	Oct. 29	53
Licenses — Minors	Harris, Wing, Clark & Green	Oct. 16	18
Motor Vehicles — Military	Sherman Thomas	Nov. 25	161
Sales — Motor Vehicles	Brenda G. Fuller	Oct. 8	13
Vessels — High Seas	Clara Stone Fields	Oct. 30	98